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President:	Mr. Rammell	(United Kingdom)
Members:	Algeria	Mr. Katti
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	Benin	Mr. Adechi
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	Philippines	Mr. Lacanilao
	Romania	Mr. Filip
	Russian Federation	Mr. Lobach
	Spain	Mr. Romeu
	United States of America	Mr. Rostow

Agenda

Justice and the rule of law: the United Nations role

Report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616)

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The meeting was resumed at 3.10 p.m.

The President: In accordance with the understanding reached in the Council's prior consultations, I shall take it that the Security Council agrees to extend an invitation under rule 39 of its provisional rules of procedure to Mr. Mark Malloch Brown, Administrator of the United Nations Development Programme.

It is so decided.

I invite Mr. Malloch Brown to take a seat at the Council table.

The Council will now hear a briefing by Mr. Malloch Brown, to whom I give the floor.

Mr. Malloch Brown: For the United Nations Development Programme (UNDP), the rule of law has moved centre stage, particularly, of course, for the countries that we are discussing today — those in crisis and in post-conflict situations. The rule of law is, after all, the indispensable platform for development. People and economies need rules if the sustained interactions that build societies are to take place.

But, if I may say so, the rule of law is too important to be left to lawyers. The rule of law must be rooted in the social and political context of a nation. It is an expression of the fundamental social contract arrived at when peace replaces war and people find the terms on which they can live together: minorities with majorities; losers with winners; women with men. Legitimacy, availability and accessibility govern the success of new laws in a post-conflict society. Do the laws meet the test of being adequately home-grown, or has somebody else's legal system been imported wholesale? Is there a court system able to restrain over-zealous police and military? Is there one that offers affordable, rapid redress to the emerging new small businessmen and women to encourage them to enter the formal economy by protecting their property rights, and indeed, giving them the very right to do honest business when warlords, crime and corruption are still rampant?

UNDP has been working on these issues throughout the world. Drawing on a very thorough recent review of our work in post-conflict and transitional countries — the conclusions of which have helped to form and shape the collective thinking of the United Nations as outlined in the Secretary-General's report — I would like to reiterate some of the key distilled lessons from our perspective.

Our starting point, as the Secretary-General made clear this morning, is that too often international assistance on the rule of law has ignored the link between the rule of law and politics. Assistance is often technocratic and apolitical in nature, focusing on the transfer of technical know-how to State institutions and on the technical modernization of institutions such as the courts and the police. In the first post-conflict stages, a policeman or policewoman in a neighbourhood often matters much more than a computer at the police station, but given violence and training issues, the first — the bobby on the beat — may be much harder to pull off.

Too often, rule-of-law assistance neglects the need to build consensus among national stakeholders on the type of reform needed. As a result, rule-of-law reforms, which we — I think, like everybody else here — consider to include the police and prison systems, can lack the necessary legitimacy to be truly effective in providing the platform for sustainable peace and development. Events in Haiti are one example of this. There, the failure was larger than a failure of laws, but the lack of local legitimacy in the new rule-of-law system, particularly with regard to the police, was one element in a broader crisis of institutions.

For that reason, we have found that international assistance needs to aim at building indigenous support for reform. Reform efforts rarely incorporate public participation in the design and implementation of projects. Crucially, most projects are implemented in consultation only with Governments, to the exclusion of civil society. Experience demonstrates that future United Nations assistance needs a component for public debate and must rely more on project proposals by local actors. The United Nations has an important role to play in facilitating negotiations among national stakeholders in order to build that political will for rule-of-law reform. The emphasis that the Secretary-General put on this point is very welcome.

All this work needs to take place in the context of a comprehensive approach. The rule of law is a system of interrelated institutions which cannot be considered separately: actions in any one impact on them all. However, we have found that rule-of-law assistance is often piecemeal and does not acknowledge these

linkages. For example, assistance to El Salvador, Guatemala and Haiti in many ways viewed the public security sector separately from the judicial and correctional sectors. It is the failure to develop complementary reforms across sectors and institutions that has often resulted in conflict and lack of clarity on the roles of different institutions.

Despite that, however, cooperation among donors is too often the exception rather than the rule, resulting in a failure to accumulate information and lessons learned. For example, in Guatemala, a country of 10 million people and 419 judges, by 1996 there had already been more than 50 reports on various aspects of its judicial system, financed by 22 donors. In addition, donors have often engaged in overlapping or contradictory projects. In Nicaragua, more than 11 donors are involved in rule-of-law reform, often in overlapping projects. Given this predicament, it is vital that donors coordinate and accept direction from the recipient country when they evaluate a country's needs, develop a framework of assistance and implement the projects.

Less elevated, but at least as important practically, is the need for early, transparent commercial laws to be put in place. That brings business out of the informal sector and, by protecting property rights and transactions, allows a market economy to take shape and provides business owners with an environment in which they can develop and provide the growth, jobs and prosperity that are a vital emollient for the scars of conflict.

Clearly, throughout such efforts — again as the Secretary-General said this morning — issues of truth and reconciliation often risk overshadowing early justice development. But we do need to be cautious. There is a time and place for the matter of truth and reconciliation: too early retributive justice can undermine a fragile peace and the even more fragile trust between the former enemies on which it rests. Yet truth and justice postponed means hidden graves deep in the minds of men and women — at least for the families of victims. And that can prevent a society from turning the page to a new era of peace.

More broadly, I would just like to add that we are working with the Secretariat to support electoral processes. I recognize that that is on the edge of the rule of law, but it is critically linked. This year alone, UNDP will have supported elections in 19 countries, including two weeks ago in Indonesia and this week in Afghanistan. Elections matter. They are the road from post-conflict to longer-term legitimacy and social consensus. Yet we have learned that if elections are premature and not placed within the process of building the rule of law, the electoral process is undermined. Then, rather than aiding the reconstruction and recovery process, weak State institutions can radicalize political discourse and exacerbate the difficult task of reaching agreements, building coalitions among national stakeholders and protecting minority rights.

Finally, I hope that within the United Nations system we are making good progress in pooling our expertise and resources to support the various rule-of-law aspects of peace operations. In Afghanistan, Iraq and Haiti, UNDP made available some of its own expert staff to advise the Special Representative of the Secretary-General on such rule-of-law issues. That has led to joint assessments, joint programming and joint resource mobilization, culminating in enhanced cooperation in the United Nations system to support national capacity-building for the rule of law.

Critical to the work and continued relevance of the United Nations in this area are the working partnerships between the Department of Political Affairs, the Department of Peacekeeping Operations, the Office of Legal Affairs, the Office of the High Commissioner for Human Rights, UNDP and others.

Recognizing the interdependence between the rule of law and development, and the social, political and economic context within which the rule of law must be rooted, it is clear that we owe it to the countries where we work and to ourselves to deliver the holistic approach to the rule of law that we preach to them.

The President: I thank Mr. Malloch Brown for his statement.

Moving forward, in order to optimize our time, I will not individually invite speakers to take seats at the Council table and then to resume their seats at the side of the Council Chamber. When a speaker is taking the floor, the Conference Officer will seat the next speaker on the list at the table.

I now give the floor to the representative of the Netherlands.

Mr. van den Berg (Netherlands): Mr. President, I would like to thank you for joining us here in New York and for presiding over this important thematic debate in the Security Council.

I have the honour to speak on behalf of the European Union. The candidate countries Bulgaria, Romania, Turkey and Croatia, the countries of the Stabilization and Association Process and potential candidates Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia and Serbia and Montenegro, and the European Free Trade Association countries Iceland and Norway, members of the European Economic Area, align themselves with this declaration.

There is no peace without justice, and there is no justice without the rule of law. As the Secretary-General himself put it before the General Assembly in his speech on 21 September, the rule of law is indeed at risk. The fundamental principles of the rule of law are flouted not only by individuals, armed groups and terrorists, but also by Member States themselves. The European Union thanks the Secretary-General for his excellent and timely report (S/2004/616) and welcomes the vital importance that the Council attaches to work on justice and the rule of law.

The European Union is committed to an international order based on the rule of law, with the United Nations at its core. At the international level, all countries need a framework of fair rules and the confidence that others will obey them. The maintenance and promotion of the rule of law is an ever-present imperative.

In conflict and post-conflict societies, there are additional challenges to the rule of law: at the very moment when the need for justice is greatest, the legal structures necessary to deliver such justice may well be absent, sometimes due to the conflict, at other times when existing structures may have lost much of their credibility.

The European Union welcomes the conclusions and recommendations set out in the report of the Secretary-General and expresses its support for the inclusion of justice and rule of law elements in resolutions and mandates. We urge all States to endorse the entire set of recommendations set out in the report. We also strongly urge the United Nations Secretariat to take forward the recommendations in the report. The European Union would also welcome expert meetings on specific parts of the report in order to specify the necessary actions in concrete situations and any initiatives of Member States in this regard. Some, such as Finland, Germany and Jordan, have put forward thoughts on the organizational consequences for the Secretariat. These are also worth studying.

The European Union would like to point to the measures set out in paragraph 65 of the report, which include strengthening the capacity of the Secretariat. Adequate resources need to be secured for relevant departments, in particular the Department of Peacekeeping Operations, so as to respond to the increased United Nations involvement in this area. The European Union urges other Member States and international organizations to contribute national expertise and materials. The rule of law has been identified as one of four main priority fields within civilian aspects of the common European Union Security and Defence Policy.

In line with the report of the Secretary-General, the European Union recognizes the need to incorporate gender justice and gender sensitivity in all efforts and activities related to justice and the rule of law, as well as the need to ensure full participation of women.

The European Union welcomes the fact that the Secretary-General has listed some norms and standards for international assistance. Peace agreements endorsed by the United Nations, and Security Council resolutions and mandates, should never promise amnesties for genocide, war crimes or crimes against humanity. Also, the United Nations should never establish or directly participate in a tribunal that can impose capital punishment.

The European Union realizes that when the international community is called to intervene in conflict and post-conflict societies, there is no one-size-fits-all formula. Our strategies should take into account national cultures and traditions, as well as local structures and capabilities. We should work towards "locally owned" sustainable post-conflict structures with well-functioning justice systems, through which future disputes can be peacefully settled.

The European Union emphasizes the important role that criminal justice has to play in a society's efforts to come to terms with past abuses. We also recognize the need to give greater attention to meeting the needs of victims — providing appropriate

reparations for harm suffered. The European Union supports the full range of transitional justice mechanisms, as well as international efforts to end impunity for the most serious international crimes.

The most significant of these efforts is beyond doubt the International Criminal Court (ICC), which is now fully operational. The great advantage of the ICC compared with its predecessors is that it is readily available when the need arises. The European Union strongly believes that the Court will be an effective tool of the international community to buttress the rule of law and combat impunity. As the Secretary-General pointed out in his report, the Security Council has a particular role to play in this regard, as it is empowered to refer situations to the Court, even in cases where countries are not States parties to the Statute of the Court. The European Union shares the conviction of the Secretary-General that all States Members of the United Nations that have not yet done so should ratify the Rome Statute at the earliest possible opportunity.

The European Union notes the report's balanced appraisal of the lessons to be learned from the experience of the ad hoc international criminal tribunals. All these lessons have convinced the European Union even more of the importance of the establishment of the permanent International Criminal Court.

The assessment of contributions to both ad hoc Tribunals are determined by all and are to be paid by all in full and on time. We have learned that some are in considerable arrears, up to tens of millions of dollars, thus stifling the ongoing work at the Tribunals. Also, the European Union would like to draw attention to the Special Court for Sierra Leone, as well as to the future establishment of the so-called Khmer Rouge tribunals. We support the idea of financing partially those United Nations-sponsored efforts to assess contributions to the extent possible.

The European Union would support a request by the Security Council to the Secretary-General to keep the Council informed on progress in taking forward the recommendations set out in the report, and supports the Council's intention to consider this matter again within six months.

The President: I now give the floor to the representative of Australia.

Mr. Dauth (Australia): Thank you, Mr. President, and welcome to New York. We want to thank the United Kingdom for convening this second open debate on justice and the rule of law, and we very much welcome the report of Secretary-General (S/2004/616), which will be a valuable tool in our collective efforts to achieve transitional justice and entrench the rule of law in States which have been torn apart by conflict.

As others have remarked, the report identifies valuable lessons learned, and articulates important recommendations for United Nations approaches to transitional justice and rule of law issues, which, as Mark Malloch Brown so wisely said, are too important to be left to lawyers. These issues include the need to assess existing capacity in a State emerging from conflict, the importance of developing comprehensive long-term approaches, the need to ensure that responses are tailored to the specific political, cultural and social characteristics of the State concerned, the importance of involving all domestic constituencies throughout the process, and the need to build national capacity.

Australia's long history of involvement in peacekeeping operations and other assistance missions confirms these lessons. Let me talk about some specific lessons learned by Australia in recent experience. These flesh out the sorts of general points which I thought Mark was making so eloquently in his helpful remarks.

The experience of the Australian-led Regional Assistance Mission to the Solomon Islands is particularly relevant for us and, I think, more generally. The reason for the request by the Government of the Solomon Islands for assistance was a fundamental breakdown in law and order in the very institutions of the State. It was only through restoring the rule of law that a durable peace could be achieved. In devising and implementing a regional response, Australia and Pacific Islands Forum partners worked closely with the people of the Solomon Islands to develop a comprehensive rule of law strategy. This included assessing the state of the Solomon Islands' justice system, providing assistance for the judiciary and to strengthen correctional services, and the deployment of 300 police from the region, who were authorized to use executive powers within the Solomon Islands to support the Royal Solomon Islands Police Force. The police were supported by a deployment of defence force personnel who assisted the deployment and

provided additional support for police personnel. This strategy has now paid rich dividends with the arrest of a large number of alleged criminals and, importantly, the removal and destruction of small arms. Law and order have now been re-established, and peace and security restored in the Solomon Islands.

The experience of Timor-Leste also indicates the importance of long-term strategies to develop the rule of law. Successive United Nations missions have played an important role in the establishment of the rule of law in Timor-Leste, of course. As the Secretary-General's report notes, activities at the community level to achieve transitional justice and reconciliation — including the work of the Commission for Reception, Truth and Reconciliation — hold important lessons for the United Nations in devising, implementing and supporting rule of law strategies in the future.

The Secretary-General's report notes that a major obstacle to effectively addressing rule of law issues from the outset of a peace operation has been the fact that police are often too slowly deployed; frequently have insufficient mandates or skills; or, indeed, are in too short a supply, I think we need to note. To address that critical gap, Australia has created the International Deployment Group, a body consisting of 500 police available to participate in peace, capacity-building and stability missions. These police will be drawn from Australian police services and will have specialized training to equip them for such missions. Many of them will have previous experience in peace operations — in the Solomon Islands and East Timor, for example. We urge other States to consider developing such mechanisms to ensure that trained civilian police are available to participate in peace operations.

The report also notes the importance of international institutions in supporting domestic efforts to deliver justice and entrench the rule of law. In that context, the establishment of the International Criminal Court was a highly significant development. The Court has an essential role to play in facilitating justice and accountability, particularly through the complementarity principle, which is a central feature, of course, of the Court's Statute.

As the Secretary-General's report notes, another recent approach to achieving transitional justice is the provision of international support for mixed institutions, such as in the case of Cambodia. Australia welcomes Cambodia's signature on 4 October of the agreement between Cambodia and the United Nations to establish an Extraordinary Chambers in Cambodia to try senior Khmer Rouge leaders. We remain committed to assisting this process and call on Cambodia and other States to join Australia in providing funding for the trials. That will enable justice to be done — justice for which the people of Cambodia have been waiting for far too long.

Let me, in closing, note the forthcoming review by the Executive Committee on Peace and Security on matching resources with peacekeeping operations to facilitate the establishment of the rule of law and transitional justice. Australia will continue to follow that process closely.

The President: I now give the floor to the representative of Jordan.

Mr. Al-Hussein (Jordan): We are grateful to you, Sir, for your spirited and able leadership on this vital issue, and we thank you most sincerely for having organized today's discussion, which affords us an opportunity to comment on the Secretary-General's report on the rule of law and transitional justice in conflict and post-conflict societies.

It is, from every angle, a very fine report — one that we welcome most warmly. It is thoughtful throughout and very well written. In particular, my delegation appreciates the repeated references the report makes to the pivotal importance of common sense — that those who plan for rule of law and transitional justice in conflict and post-conflict societies must be guided by those simple tenets of the obvious: listen to the local actors; know what is unique from what is not and therefore — drawing from our shared historical experiences — what is relevant to the circumstances in question from what is not; appreciate the broader picture when seizing on the details; and do all this before sequencing an approach, maintaining, always, a policy that is nimble and alive to changing conditions. We applaud that way of thinking and congratulate the Secretary-General on a very well produced, analytical report.

My delegation would very much like to offer three observations on the detail itself. The first relates to the refrain, found particularly in paragraphs 41 and 42 of the report, that the two ad hoc Tribunals are and have been expensive propositions — the insinuation being, perhaps, that they have become too expensive

and may not even worth it. Indeed, so often has that assertion of high cost been repeated in this Chamber in the context of the Tribunals that we can safely say it has now become almost a given to many Governments, as well as to the United Nations itself. But why?

In all honesty, my delegation is at a loss to know where this thinking comes from, and we believe that it needs to be thought through further. For a start, the International Criminal Tribunal for the Former Yugoslavia (ICTY) costs the United Nations membership, per year, close to $175 million, which, to my delegation's way of thinking, is a very reasonable amount. For $175 million is less than one twentieth of what the United Nations paid annually, during the war, to maintain its peacekeeping operation in the former Yugoslavia — less than one twentieth. Put another way, the ICTY would have to continue operating until 2014 for its budget over the span of 20 years to measure up to what this Organization spent in one year alone — 1994 — on the operations of the United Nations Protection Force. And were it not for the ICTY, we can all be certain that the Dayton Peace Agreement would not have held in the form it has done for the past nine years. And so, if the alternative to justice and accountability is a likely return to a condition of general warfare, with all its familiar consequences, can the amounts already spent on the ICTY be construed as too great?

Much is often made by those who question the cost of the seeming absence of any impact the ongoing work of the ICTY has on the situation on the ground. And yet, we would argue, it is simply not necessary for the peoples of the former Yugoslavia to know what exact cases are now before the Court, who the defendants are, who is litigating or who is judging; or to know the judgements and the sentences; or even to understand the jurisprudence for there to exist a state of continuing peace. What is important is that the majority of people are aware that the Tribunal exists and that it functions properly — that is, that those accused of bearing the greatest responsibility for the commission of the worst crimes are being prosecuted. And that is sufficient.

With the international community prepared to spend almost $1 trillion a year on weapons — that historic companion of war — how can we say that anything we have spent thus far on justice — the surest companion of peace — is too expensive? In short, we the international community clamour in an ad hoc manner for instant results when it comes to international criminal justice, and we insist that those results must be quantifiable, when the very systems of justice we seek to create aspire to much more than simply that. We suffer collectively from a very short memory. We tend to be thrifty when it comes to spending on law, and generous when it comes to spending on weapons.

Our second observation concerns the Secretary-General's conclusions and recommendations, which are found at the end of the report and with which we agree almost entirely. We would have liked to see, however, the inclusion, in the last portion of the report, of the Secretary-General's pertinent observations concerning the International Criminal Court and its significance, remarks found earlier in the report. With three more countries having acceded to the Rome Statute in recent days, bringing the total number of States parties to 97, the majority of Member States of the United Nations are now party to the Statute, and all of those were ratifications were concluded in only six years. That is by no means a small accomplishment.

Turning to the second portion of the recommendations, where they relate specifically to the United Nations system, we are pleased to join the delegation of Finland in attaching ourselves to the remarks made earlier by the Permanent Representative of Germany on what possible institutional changes could be considered by the Executive Committee on Peace and Security in the foreseeable future, as proposed in our joint non-paper. My delegation believes earnestly that if we wish ourselves and the United Nations a high measure of success in that area, it will ultimately only be attainable through the establishment of a dedicated rule-of-law department — a field-oriented legal and judicial service.

Finally, it is important that the Security Council is hosting this second thematic debate on justice and the rule of law and the role of the United Nations, for it not only compliments well the priorities established by the Secretary-General in his speech before the General Assembly two weeks ago but also because it will, we hope, set the tone in the times ahead for the Council's own approach to the rule of law, the recognition of the law's primacy and the law's centrality to the maintenance of international peace and security. In the same vein, my delegation looks forward to the Council's upcoming consideration of the advisory opinion rendered recently by the United Nations

highest judicial body, the International Court of Justice, in a matter known to everyone here that is also of substantial importance to my delegation. We hope that, when that time comes, the Council's actions will be consistent with its current reflections.

The President: I now give the floor to the representative of Finland.

Ms. Rasi (Finland): Finland fully associates itself with the statement made by the Netherlands on behalf of the European Union.

Finland played an active role in the process leading to the publication of the report of the Secretary-General on transitional justice and the rule of law in conflict and post-conflict societies, which is under discussion today. Together with the United Kingdom, other interested delegations and the International Center for Transitional Justice, Finland organized a series of seminars bringing together interested Member States, the Secretariat and civil society, thereby facilitating inclusive discussions on themes central to the report.

Finland views the report of the Secretary-General as an important milestone. It has given the United Nations a chance to consider the lessons learned in this area and, perhaps even more importantly, to reflect upon what should be done in the future. The report recognizes that the Organization has in recent years increased its focus on transitional justice and rule of law issues in its efforts to bring peace and stability to conflict-torn societies. There is an increased demand for United Nations action, which has been responded to, inter alia, by including rule of law and justice components in the recently established United Nations peace operations in Liberia, Côte d'Ivoire and Haiti.

In planning the United Nations response, it is important that the strategy be based on national needs and that local actors are fully engaged in the planning and implementation process. Any strategy should aim to strengthen the capacity of State institutions. After all, there is no long-term stability if national institutions are unable to take over when the international presence ceases. We view the rule of law and respect for human rights as essential to achieving long-term sustainability. Without the rule of law and respect for human rights there is a risk that a State could revert to conflict.

Dealing with atrocities against civilian populations — and especially against women, children, minorities and refugees — becomes a core issue in the process of establishing trust in the judicial system in States emerging from conflict. In that connection, Finland wishes to give its full support to the International Criminal Court (ICC) and to ad hoc tribunals. The International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda have played a significant role in ensuring accountability where national judicial systems have failed to do so. As for deterrence and prevention, the impact of the ICC may well be even more important. The ICC has the great advantage of being available when need arises. That means, among other things, that enhancing respect for the rule of law must not be left to the post-conflict phase, but should be addressed while a conflict is still raging.

At the same time, the ICC is an institution for exceptional situations only. The primary responsibility for bringing offenders of international crimes to justice continues to rest with States. The impact of the ICC will have to be measured also by its indirect effect in encouraging States to incorporate and apply the rules of the Statute in their national jurisdictions. One could speak of the role of the Court in mainstreaming accountability for the most serious crimes and in building local rule of law. That term also emphasizes the role of the ICC in setting standards for national jurisdictions, including a high level of due process rights for defendants.

Finland believes that the increase in the demand for the involvement of the United Nations in rule-of-law and transitional justice-related issues should be met by enhancing the capacity of the Organization. To that end, adequate resources should be created at United Nations Headquarters. We hope to see proposals from the Secretary-General on that matter in the near future. We especially hope to see the capacity of the Department of Peacekeeping Operations (DPKO) enhanced in this area, as we recognize that it is vital that the issues relating to the rule of law are addressed from the beginning of an operation. In DPKO, resources are perhaps most urgently needed in the Criminal Law and Judicial Advisory Unit, the currently two-person Unit responsible for the judicial and corrections components of a growing number of United Nations peace operations, as well as in the Civilian Police Division.

Meeting the growing challenges also requires effective cooperation within the entire United Nations system. Finland therefore strongly believes that rule-of-law and transitional justice issues warrant their own dedicated entity in the United Nations Secretariat. For that purpose, Finland has prepared a non-paper, together with Germany and Jordan, reflecting upon the possibilities for future institutional structures in the United Nations. The non-paper has just been presented to the Council by my German colleague, and it was circulated to all the Permanent Missions prior to this Security Council debate. Our sincere hope is that the ideas presented in the non-paper can provide a starting point for future Executive Committee on Peace and Security deliberations on enhancing arrangements by the United Nations system for supporting the rule of law and transitional justice.

The United Nations should strengthen partnership arrangements with regional organizations, individual Member States and civil society organizations, which often have valuable expertise and resources in this area.

Effective coordination among all those involved in the rule of law and transitional justice projects, including those of UNDP, in conflict areas could ensure complementarity of action and success in delivering positive results. More cooperation is also needed to provide the United Nations with competent staff to deploy to its operations.

Finland hopes the report of the Secretary-General will enable the United Nations to further develop its action in the area of rule of law and transitional justice. To that end, it is crucial that the various recommendations laid out in the report be effectively implemented. We want to emphasize that the report can lead to results only if matched by a commitment on the part of the United Nations and Member States to provide adequate resources and political support. In that respect, we were pleased to hear Secretary-General Kofi Annan affirm in his speech to the General Assembly on 21 September (see A/59/PV.3), and again today, that he would make strengthening the rule of law and transitional justice a priority for the rest of his term of office.

Finland wants to express its commitment to continue working towards strengthening the rule of law and transitional justice and calls on other interested Member States to join in this process.

The President: I now call on the representative of Austria.

Mr. Pfanzelter (Austria): Austria fully endorses the statement made earlier by Ambassador Dirk Jan van den Berg on behalf of the European Union.

I would like to elaborate very briefly on the following two points. First, in his excellent report (S/2004/616), the Secretary-General stressed that the most significant recent development in the international community's struggle to advance the cause of justice and the rule of law was the establishment of the International Criminal Court (ICC). In last year's debate, I expressed the confidence that the United Nations and the ICC would cooperate successfully to achieve their common goal of strengthening the rule of law and justice in international relations. We are very pleased to note that just a few days ago the Secretary-General and the President of the International Criminal Court signed the Relationship Agreement between the United Nations and the ICC. This is an important step forward in enhancing the cooperation between the two organizations. My delegation is convinced that close cooperation between the United Nations and the ICC will guarantee success in our common efforts to end impunity and to strengthen the rule of law.

Secondly, my Government warmly welcomes the Secretary-General's pledge to make the strengthening of the rule of law and transitional justice in conflict and post-conflict societies a priority for the remainder of his term. In this respect, and in view of the unique role and responsibility of the Security Council, the Austrian Foreign Minister announced the initiation of a discourse on the role and functions of the Security Council in strengthening an international system based on the rule of law. As a first step, Austria will convene a panel, on 4 November, on the question of "The Security Council as world legislator", during this year's International Law Week at the United Nations in New York. The panel, which is being organized in cooperation with New York University, is designed to enhance the dialogue between theory and practice on this important topic. We hope that this initiative will contribute to a stimulating and fruitful discussion.

The President: I offer my apologies; I have to depart. I would like to thank everybody for their cooperation in the handling of today's meeting. I intend

to hand over to Sir Emyr Jones Parry, our Permanent Representative.

I now give the floor to the representative of Uganda.

Mr. Butagira (Uganda): The rule of law should be viewed in the wider context of the economic and social setting. Allow me to congratulate the Secretary-General on his report (S/2004/616), which is excellent, especially on the issue of adequate funding for the reform of the justice system. Uganda fully endorses the recommendations in that report.

The United Nations, over the years, has endeavoured to put in place an institutional architecture to regulate the conduct of States, based on the rule of law, respect for human rights and the promotion of good governance: the prerequisites for conflict prevention. Thus, an array of conventions, such as the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, the Statute of the International Criminal Court, and so forth, have been elaborated. Through numerous General Assembly and Security Council resolutions, the United Nations is at the centre of the globalized world and has done remarkably well in advancing world order and security, despite a few setbacks. The Charter of the United Nations remains a beacon of hope. All those instruments add up to a code of conduct in conflict and post-conflict situations, especially in dealing with the culture of impunity.

One of the subjects that fascinated me when I was studying law at Harvard Law School, was the subject of exemption clauses in the field of contracts. An array of ingenious devices was devised to circumvent the application of exemption clauses. Thus, exemption clauses were not looked upon favourably. In the field of the application of international law, there should be no exemption clauses. Both the mighty and the weak must be treated equally. In extremely rare cases, national interest may justify a departure from recognized norms, but such departure should be well grounded in law and should be the exception rather than the rule. In this way, the United Nations would gain credibility.

The rule of law should also mean that the United Nations does not stand idly by while some States, either through failed systems — that is, failed States — or through an inability to act, are unable to protect their citizens from being butchered or otherwise grossly abused. Indeed, the notion of sovereignty should imply the obligation on the part of the State to protect its citizens. Where this is lacking, the international community should intervene on humanitarian grounds. I, therefore, commend the report of the International Commission on Intervention and State Sovereignty co-chaired by Gareth Evans and Mohamed Sahnoun, which elaborated on this concept. Sovereignty should not be used as a cloak to cover gross human rights abuses by nations.

Attention should now be focused on defining the parameters of that right to intervene on humanitarian grounds so that it is firmly embedded in international law.

The causes of conflict should be addressed, poverty in particular. Justice and the rule of law mean that all nations, big and small, developed and developing, should benefit equally from the benefits of globalization. For developing countries, this implies, for instance, access to international markets for their products, with the elimination of trade barriers. Trade, not loans, should be at the centre of the international development agenda. This does not mean, however, that we should do away with loans. Loans and grants should supplement trade. The developed countries should live up to the promises they made at various international United Nations conferences, such as those set out in the Monterrey Consensus. Lastly, on this issue, debts for developing countries, both multilateral and bilateral, should be entirely written off in order to kick-start meaningful economic development.

Trials by tribunals set up by the United Nations are slow-moving. Not only are they costly: justice delayed is justice denied. The United Nations should delegate some of the cases to be tried by local courts with international observers.

The Charter of the United Nations places primary responsibility for maintaining peace and security on the shoulders of the Security Council. For practical reasons, in some instances that responsibility has been devolved to regional organizations. In that regard, the Economic Community of West African States (ECOWAS) and the nascent Peace and Security Council of the African Union have played an important role in maintaining peace and security on the African continent. However, that devolution should not mean abdication. We see the dangerous trend of a hands-off policy by the Security Council in peacekeeping

operations in Africa. That trend should be discouraged. Both the Security Council and regional organizations should work in partnership where appropriate.

Lastly, let me say a word about the right to self-defence, which is enshrined in the Charter. There was a time when this was not an issue, since aggressive attacks would take place on the territory of the State defending itself. The problem arises, however, when a State has to defend itself on the territory of the offending State. Surely a State has a right to nip attacks in the bud and for that purpose carry out a pre-emptive attack. The problem is, where should the line be drawn between acts of aggression and acts aimed at warding off immediate threats of attack? The international community should elaborate on this issue, since it has a direct bearing on conflict resolution.

The President: The next speaker is the representative of Switzerland, to whom I give the floor.

Mr. Maurer (Switzerland) (*spoke in French*): At the outset, I should like to thank the United Kingdom for having convened this open debate on justice and the rule of law and, in so doing, enabled us to have an exchange of views on a topic that Switzerland deems to be essential and of priority interest.

Switzerland thanks the Secretary-General for his report on the rule of law and transitional justice in conflict and post-conflict societies, dated 23 August 2004. The report addresses questions that are key to advancing the process of reflection and the efforts undertaken to allow our Organization to better contribute to the re-establishment of the rule of law and to the administration of an effective, impartial and professional justice in societies in conflict or post-conflict situations. That concept is just as crucial in the process of elaborating sustainable development policies. Let me just say that in both cases, we are speaking of the "rule of law" — not "rule by law".

The report recalls the crucial importance of respect for the international norms recognized by the Charter of the United Nations as well as in the context of human rights law, humanitarian law, international criminal law and refugee law. No lasting peace is possible without unconditional respect for those norms. Switzerland recalls, in that respect, that, according to article 1 common to the Geneva Conventions, all States have a duty to respect, and to ensure, respect for the fundamental standards of humanitarian law.

In his report, the Secretary-General rightly stresses the need to base efforts to promote justice and the rule of law on processes that take account of local realities, and to support them by making better use of existing competences and capacities in the countries concerned. However, strict respect for the rule of law by United Nations organs and Member States in all their activities and their interactions at the international level remains indispensable if the Organization is to maintain its credibility in the process of the promotion of the rule of law at the level of individual States.

I would like to highlight two particular aspects of the question of the rule of law: international criminal justice and the rule of law as an essential factor in the promotion of peace.

The ad hoc international criminal tribunals for the former Yugoslavia and for Rwanda have made a considerable contribution to re-establishing justice and combating impunity in the regions concerned. The tribunals have also played a historical role in the development of international criminal law. It is essential that they receive the means necessary to discharge their mandates, as was eloquently stated earlier by the Permanent Representative of Jordan.

Furthermore, Switzerland agrees with the Secretary-General's assessment that

> "the most significant recent development in the international community's long struggle to advance the cause of justice and rule of law was the establishment of the International Criminal Court". (*S/2004/616, para. 49*)

With the recent accessions to the Rome Statute, more than half the States Members of the United Nations are now States parties to the Statute. The Court embodies the hope for a definitive end to impunity. Nevertheless, as the Secretary-General stated in the course of his address to the General Assembly,

(*spoke in English*)

> "the rule of law starts at home" (*A/59/PV.3, p. 3*).

(*spoke in French*)

That consideration is underlined by the principle of complementarity incorporated into the Rome Statute.

In this context, we would like to call on those States that have not yet done so to ratify the Rome

Statute and fully to collaborate with the Court. Switzerland also invites the Security Council to assume its responsibilities and to exercise its particular competence as recognized by the Rome Statute, namely that of bringing before the International Criminal Court situations in countries that are not parties to the Statute.

The Secretary-General's report underlines the importance of the rule of law for the stabilization of post-conflict societies. It is thus necessary to clarify what the rule of law means in terms of concepts, policies and operations. Democratic legislative procedures; equality before the law and fairness in the application of the law; a humane penal system and a police force anchored in civil society — all these are elements of a transition process which deserve increased support. Furthermore, those elements must be given greater weight in the context of the efforts of the Security Council, the Economic and Social Council, the General Assembly, the Secretariat, and in particular the United Nations funds and programmes. In that context, we would note that the preliminary recommendations made in the report of the Secretary-General do not go as far as the text itself had led us to hope.

Switzerland calls on the Security Council and all Member States to ensure that adequate means are available to better meet the challenges posed by the promotion of justice and of the rule of law.

Finally, we should not lose sight of the fact that steps to promote the rule of law and transitional justice are less costly, and their results longer-lasting, than the consequences of conflict, insecurity and impunity. Switzerland plans actively to participate in the process of reflection undertaken with regard to these questions.

The President: The next speaker is the representative of South Africa, to whom I give the floor.

Mr. Maqungo (South Africa): The strengthening of, and adherence to, the rule of law has always been central to ensuring democracy in conflict and post-conflict societies. We are therefore pleased that the Secretary-General has presented a report, entitled "The rule of law and transitional justice in conflict and post-conflict societies", that captures the wealth of relevant expertise and experience within the United Nations system. We welcome this report because it provides valuable lessons which the Council can utilize in implementing its resolutions and mandates.

The exercise of the rule of law, especially in conflict and post-conflict societies, is critical in creating conditions for peace and security that allow for development to take hold. Quite often, in conflict and post-conflict areas, especially in Africa, our experience has been that poverty and underdevelopment contribute to non-adherence to the rule of law. Yet it is that same rule of law that, when applied to regulate the conduct of individuals with each other and with the State, creates conditions for sustainable development.

The Secretary-General states that

> "Peace and stability can only prevail if the population perceives that politically charged issues, such as ethnic discrimination, unequal distribution of wealth and social services, abuse of power, denial of the right to property or citizenship and territorial disputes between States, can be addressed in a legitimate and fair manner." (*S/2004/616, para. 4*)

The Secretary-General further states that,

> "In formulating recommendations for the Security Council, planning mission mandates and structures, and conceiving assistance programmes, it is imperative that both the Security Council and the United Nations system carefully consider the particular rule of law and justice needs in each host country" (*ibid., para. 14*).

The Secretary-General also makes the point that, "a piecemeal approach to the rule of law and transitional justice will not bring satisfactory results in a war-torn or atrocity-scarred nation" (*ibid., para. 23*). Our experience with our own peace process in South Africa led us to the same conclusion: that the rule of law and transitional justice must address the causes of the conflict and the effects the conflict had on the population.

In South Africa, the cause of the conflict was the oppressive policy of apartheid. We adopted a constitution that builds a non-racial society to resolve that cause of that conflict. Following democratic elections in 1994, we put in place, within that constitution, State institutions supporting constitutional democracy, such as a Public Protector, a Human Rights

Commission and a Gender Equality Commission. Furthermore, our Government promulgated legislation on affirmative action and passed policies on Black Economic Empowerment to ensure that the problem of unequal distribution of wealth was addressed.

We also had established the Truth and Reconciliation Commission as a process to promote national unity and reconciliation to heal the wounds inflicted by the oppressive apartheid policy on our society. That process offered an opportunity for victims to face their perpetrators and find closure and for the perpetrators to seek the forgiveness of their victims. The meetings of the Truth and Reconciliation Commission were held in public and broadcast on television so that the whole country could be part of the healing process. Only those who had told the whole truth were granted amnesty.

We have set up institutions for collective reparation, such as the Freedom Park, to promote programmes to remember those who died in pursuit of our democracy and we are also engaged in providing individual reparation measures. Reparations are the State's way of participating in the healing process and restoring some dignity to those who suffered under the apartheid policy.

We are the first to concede that our South African experience may not be applicable to other countries emerging from conflict and the lessons we have learned may not travel well. However, the point made in the Secretary-General's report is that adherence to the rule of law can contribute to lasting peace and security.

We wish to associate ourselves with the recommendations made by other delegations regarding the institutional changes necessary to enable the United Nations to better cope with its work to strengthen the rule of law and transitional justice. The importance of the rule of law and transitional justice cannot be overemphasized.

We are convinced that international criminal justice systems, such as the International Criminal Court and the international tribunals established by the United Nations, can contribute to establishing a lasting peace in the areas where they are utilized. We wish to encourage the Security Council to exercise its mandate to refer situations to the International Criminal Court when national assessment needs dictate such a referral. That will guarantee that the practice of the rule of law becomes the bedrock for strengthening democracy.

Finally, my delegation supports the overall conclusions and recommendations of the Secretary-General. We wish to underline the importance of considering the needs of each specific situation so as to avoid developing common strategies for each and every conflict or post-conflict situation. After all, there can be no one-size-fits-all solution for every problem.

The President: I now call on the representative of Liechtenstein.

Mr. Wenaweser (Liechtenstein): Mr. President, it is a pleasure to see you preside over this meeting and I thank you for your initiative in convening this important debate.

We welcome the report of the Secretary-General and the set of actionable recommendations contained in it. Even when limited to conflict and post-conflict societies, the topic of the rule of law and transitional justice is a very vast one, and we thus need a clear focus in our debates. We therefore think it might be useful if the next report — and we support a follow-up report to be submitted in six months' time — could give Member States some guidance as to what topics could be central to our next debate.

The rule of law is an indispensable element of sound domestic policies, often referred to as good governance, and thus of sustainable development worldwide. Liechtenstein attaches great importance to the rule of law and is willing to assist other States through capacity-building in areas where we have relevant expertise. Our authorities are currently discussing with the United Nations Development Programme office in Belgrade the modalities for hosting an international conference on strengthening international cooperation in combating financial crime. That event will offer an opportunity for judges, prosecutors and other officials to exchange their expertise and experiences in the area of best practices.

It is clear that the United Nations must play a central role in the promotion of the rule of law. We therefore support the relevant efforts undertaken in the Security Council and elsewhere and welcome the leadership exercised by the Secretary-General.

The rule of law at the domestic level, as we are debating it today, must be complemented at the international level through full and unconditional

respect for internationally recognized standards, and transparent and fair rules in international decision-making. Such respect for the rule of law is a prerequisite for credible international assistance efforts to foster the rule of law at the national level.

The concept of the rule of law as defined in paragraph 6 of the report before us makes it clear that the rule of law has both a formal and a substantive component. Governance must not only be in accordance with the law, but the law itself must be in conformity with international human rights standards. It is thus crucial that the United Nations, in assisting societies emerging from conflict, promote respect for those standards. The rejection of any endorsement of amnesty for genocide, war crimes or crimes against humanity is but one such standard. Helping countries to cope with their transitional justice needs is not a purely technical, juridical exercise, but a substantive political process. In providing such assistance, the United Nations must uphold fundamental standards, while at the same time working with the specifics of any given situation.

There are — and this debate has made this very clear — no standard solutions or models that can uniformly be applied to all conflict or post-conflict situations. One of the most important lessons from the past in our view must be the principle of ownership. The goal of international or internationally assisted efforts must always be to enable the country concerned to ensure respect for the rule of law on its own.

The International Criminal Court is an institution that can play an instrumental role in that respect. The principle of complementarity upon which it is based constitutes a strong incentive for States parties to strengthen their national judiciaries, a key component of the rule of law. Bringing the perpetrators of the worst crimes to justice is one key function of the Court. Another is to be a component of international efforts, led by the United Nations, to ensure effective and independent prosecutions and trials at the national level worldwide.

A continued and intensive working relationship between the United Nations and its specialized agencies and programmes on the one hand, and the Court on the other, is therefore a necessity. We are confident that the relationship agreement signed between the two institutions just two days ago will be the basis for a constructive and mutually beneficial working relationship. As stated in the report before us, the Security Council has a particular role to play with regard to the International Criminal Court. The referral of situations to the Court is a unique and potentially powerful tool for the Council in ensuring that the worst crimes do not go unpunished.

The lessons learned from the ad hoc tribunals established by this Council will show the way forward for the ICC, as well as for other forms of assistance to national criminal justice systems, such as hybrid tribunals or other mechanisms that might, in certain cases, be the preferred or, indeed, complementary solutions. Once again, national ownership and a long-term contribution to the administration of justice in the society concerned must be key goals. We continue to support the ad hoc tribunals in their efforts to finish their work by 2010.

The Secretary-General's report shows that the United Nations has for many years been very active in helping countries strengthen national justice systems. These efforts and the availability of relevant expertise need to be systematically enhanced. The Executive Committee on Peace and Security should look into these matters, as suggested in the report, and make proposals for a number of institutional arrangements, including the development of a comprehensive roster of experts. As the importance of these activities increases gradually, the work carried out by the relevant players should be better coordinated and more accessible to Member States. A coordinating body, such as a unit or focal point within the Secretariat, is therefore needed, and we strongly support relevant discussions on this topic. We particularly welcome the non-paper submitted and introduced this morning by Germany, also on behalf of Finland and Jordan.

The President: I now give the floor to the representative of Belarus.

Mr. Sychov (Belarus) (*spoke in Russian*): First of all, I wish to thank the delegation of the United Kingdom for organizing a discussion in the Security Council on "Justice and the rule of law: the United Nations role". We believe that the discussion of this item is important and timely. We would also like to express our gratitude to the Secretary-General for preparing a report for today's discussion. It is very important that, in that report, the importance of observing the international norms set forth in the United Nations Charter is emphasized.

The Security Council and the United Nations as a whole make a valuable contribution to the re-establishment of national legal systems in post-conflict societies, particularly in the field of transitional justice. The participation of the Security Council in the exercise of international justice with respect to persons who have committed crimes during conflicts substantially influenced the development of the system of international criminal tribunals and international humanitarian law.

At the same time, this participation has generated many critical observations by members of the international community. These critical observations mainly relate to the correlation between Council activities and national efforts to restore justice and achieve national reconciliation in post-conflict societies. The lessons learned through the functioning of the international tribunals for the former Yugoslavia and Rwanda confirm that transitional justice systems must be based to a greater extent on national foundations. The United Nations peacekeeping missions are also a key aspect of the Organization's involvement in establishing the rule of law and rebuilding a justice system in conflict and post-conflict societies. The Security Council should focus greater attention on the issue of the safety of the personnel engaged in those missions.

The Republic of Belarus understands the topic for consideration during today's open meeting to be much broader than simply "Justice and the rule of law in conflict and post-conflict societies". The Security Council plays a considerable role in strengthening the rule of law in international relations, mainly in the area of its primary responsibility, the maintenance of international peace and security. It is the principal United Nations organ legitimizing the use of force for resolving situations posing a threat to international peace and security and the application of other enforcement measures against States under Chapter VII of the Charter. Belarus does not accept any legal conceptual innovations aimed at sidestepping or limiting the power of the Security Council to authorize or limit the use of military force. There should be no double standards in such an important realm of international law as the law of international security.

New global challenges have appeared in the twenty-first century and the Security Council has had to respond to these new challenges. A number of important resolutions on suppressing terrorism and preventing non-State actors from acquiring weapons of mass destruction, in particular resolutions 1373 (2001) and 1540 (2004), have been adopted. These resolutions show that the Council has been going beyond mere political enforcement and has been making a genuine impact on setting up norms of international law. Belarus believes that the involvement of the Security Council in forming rules of international law can be justified only by exceptional and extraordinary circumstances that constitute a threat to international peace and security.

It is important for the Security Council to become a more democratic and representative organ of the United Nations and to ensure general consent of States with respect to its setting of norms. In this connection, we call upon the members of the Security Council to make a comprehensive examination of its decisions to define the compliance of those decisions with the provisions of universal treaties and other norms of international law. The practice of including in resolutions political elements that contradict existing international law challenges the idea of the supremacy of law.

We note in this connection the need for more constructive and comprehensive action on the criteria to be used for the imposition of sanctions by the Security Council, the General Assembly and the Economic and Social Council.

In conclusion, allow me to say that I support continuing the practice of holding open Security Council debates on the United Nations role in ensuring the rule of law and strengthening justice. In considering this issue, major emphasis should be placed on the issues of the rule of law in international relations and the role of the Security Council in securing this rule.

The President: I now give the floor to the Permanent Observer of Palestine.

Mr. Al-Kidwa (Palestine): The rule of law and transitional justice in conflict and post-conflict societies is a matter of great importance to Palestine. We are a society that has been trying to rebuild itself and its institutions, including in the justice sector, as if we were in a post-conflict situation. The international community provided us with assistance in this field, and some have even tried to hold us accountable to the standards of justice that would be applied to a post-conflict situation.

The problem, however, is that, in reality, we remain in the midst of a raging conflict in which the stronger party, the occupying Power, continues to colonize Palestinian land and commit illegal acts against the Palestinian people, seeking to ensure that we do not succeed in our post-conflict reconstruction and to create conditions intended to negate our national rights and even our national existence. For example, while the Palestinian Legislative Council has been trying to create a body of Palestinian laws to replace those that existed before, the occupying Power continues to enforce its military orders and even to invoke British emergency regulations in the occupied Palestinian territory, including East Jerusalem, while at the same time establishing a separate legal system for the illegal Israeli settlers.

The international community must draw some conclusions. It is imperative to ensure, at the very least, a clear basis for an end to the conflict before one delves into the tasks of post-conflict reconstruction. Ignoring the crux of the problem and shelving international law with regard to the conflict itself can only lead to failure.

Today's debate concerns a broader theme, and we welcome that, for there exists a simple reality: without justice one cannot have peace, and without law one cannot have justice. Further, in the absence of compliance with the law and "playing by the rules", it is chaos that will prevail, with outcomes that are difficult to fully predict. We welcome the intention of the Secretary-General to focus on the rule of law in the coming period. We also welcome the increasing significance that the International Criminal Court is acquiring within the international debate, and we strongly hope that more centrality is given to the International Court of Justice, as the principal judicial organ of the United Nations system.

If we are to succeed in building and institutionalizing a culture of law — especially in post-conflict situations — we must ensure that conflicts are resolved on the basis of law. In the case of Palestine, the law has been elusive. At best it has been sidelined, and at worst it has been transgressed in the most egregious manner. The rights of the Palestine refugees under international refugee law have been ignored, including their right to private property. The human rights of the Palestinian people under international human rights law have been systematically violated. The rights of Palestinian protected persons under international humanitarian law have been trampled. And even our rights under the Charter have been denied, including our erga omnes rights such as the right to self-determination.

It seems accurate to say that this is an unprecedented case. The United Nations, especially the Security Council, has failed in a historic way. It has failed to implement its own resolutions; it has failed for more than 37 years to prevent the insidious and active colonization of Palestinian land and constant attempts to change the status of Jerusalem, a city of international importance; and it has failed to be faithful to the purposes and principles of the Charter. In short, it has failed to uphold the law.

To be fair, this is not the failure of the membership as a whole. True, a few might have tried to appease the aggressor at the expense of the law; but, more significantly, one permanent member has consistently prevented the Council from taking serious actions, has provided the occupying Power with unjustified diplomatic protection and has actively tried to neutralize — and at times even to negate — the law. The consequences of that behaviour have been extremely detrimental, not only in terms of the rights of the Palestinian people, but also in terms of the international system and its authority and credibility. That pattern of behaviour has undermined the rule of law and has deepened cynicism regarding justice and the rule of law, alienating those who believe in it and discouraging reliance on it.

While that has been a disastrous factor in the case of Palestine — compounding and prolonging the conflict — we should not resign ourselves to accepting that that is the way it has to be. Indeed, it is our deep hope that that pattern — and not the law — will be cast aside when the issue of the ICJ's advisory opinion, which conclusively defined the applicable rules and principles of international law on the matter — is brought before the Council for consideration. The importance of that issue with regard to the debate on justice and the rule of law — both generally and specifically in terms of Palestine — should not be underestimated. A prerequisite for the building by the Palestinian people of a different culture internally is the existence of a culture in which their rights are respected and in which the laws are upheld by an international community that promotes justice and peace by applying the same standard of law to all the peoples of the world.

The President: I call on the representative of Sweden.

Mr. Lidén (Sweden): Sweden fully aligns itself with the statement made earlier by the representative of the Netherlands on behalf of the European Union. Nonetheless, I would like to take the floor to highlight some issues that Sweden believes to be of particular importance.

As Members of the Organization, we have a duty to respect and promote the rule of law. That applies both at the national level and in our international relations. Without the rule of law, there can be neither economic progress nor social justice. We therefore welcome the Secretary-General's intention to make the rule of law and transitional justice in conflict and post-conflict societies a priority for the remainder of his tenure.

As in our intervention in the debate on this item last year, Sweden would like to put extra emphasis on the issue of prevention. In the Secretary-General's words, "an ounce of prevention is worth significantly more than a pound of cure" (*S/2004/616, para. 4*). The experience of the United Nations in the field of justice and the rule of law in post-conflict situations should enhance our ability to act early to prevent conflicts. As stated by the Secretary-General, the root causes of conflict have often been left unaddressed:

> "Peace and stability can only prevail if the population perceives that politically charged issues, such as ethnic discrimination, unequal distribution of wealth and social services, abuse of power, denial of the right to property or citizenship and territorial disputes between States, can be addressed in a legitimate and fair manner. Viewed this way, prevention is the first imperative of justice." (*Ibid.*)

Sweden fully subscribes to that view. To recognize these links and to address the root causes in time will require enhanced coordination among all the relevant actors.

Prevention is one of the Security Council's responsibilities, as reaffirmed by its resolution 1366 (2001). Peace-building efforts in the area of the rule of law and justice in post-conflict societies constitute one form of preventive action. It reduces the risk that such societies will fall back into conflict.

Domestic institutions must be complemented by international and multilateral action. The existence of the International Criminal Court is a deterrent for presumptive perpetrators; so is the readiness of domestic legal systems to apply universal jurisdiction for international crimes. Not only do we need to make the Rome Statute of the International Criminal Court universal; we also must increase cooperation between domestic legal authorities.

Increased focus on those matters requires concrete action within the Secretariat, and changes in the Organization may be needed. In that context, I welcome the interesting proposals on the rule of law and transitional justice submitted by Finland, Germany and Jordan.

Another key issue is the division of labour between the various bodies of the United Nations and the international community. This should be determined by needs, not by budgetary concerns. Further, we must ensure better cooperation between those bodies, not least regarding the transition of responsibilities. The overall aim must be to work towards establishing the rule of law in a coherent fashion and through the whole transition from conflict to peacekeeping and humanitarian assistance to sustainable development.

Finally, let me stress three facts that are sometimes overlooked.

First, attorneys — defence lawyers and others — are vital to a nation's legal system. Not only do they provide the representation and assistance to which both accused and victims have a right; they also contribute to the rule of law, by ensuring that authorities are held to account and by defending human rights. Secondly, concerning the importance of gender justice, the outcome of the conference organized by the United Nations Development Fund for Women (UNIFEM) and the International Legal Assistance Consortium (ILAC) conference in September could prove valuable in mainstreaming gender issues in the area of the rule of law and in contributing to further implementation of Security Council resolution 1325 (2000) concerning women and peace and security.

Thirdly, no one — including peacekeepers — is above the law. We welcome the bulletin of the Secretary-General on special measures for protection from sexual exploitation and sexual abuse, and believe it is essential that any United Nations personnel not

complying with those minimum standards be held accountable.

The rule of law is a means of protecting the dignity of all human beings as well as the foundation for well-functioning societies. Sweden is grateful that the issue of rule of law and transitional justice is brought to the fore and that it remains on the agenda of the Security Council and the United Nations at large. It is by focusing on the promotion and respect for justice and the rule of law in conflict and post-conflict societies that we might be able to prevent conflicts from reoccurring.

The President: I thank the representative of Sweden. I now give the floor to the representative of Argentina.

Mr. D'Alotto (Argentina) (*spoke in Spanish*): Allow me first to thank you, Sir, for convening the open debate. I would also like to thank our compatriot, Mr. Juan Méndez, Special Adviser to the Secretary-General on the Prevention of Genocide and Director of the International Center for Transitional Justice, for his very useful and interesting statement. We would also like to thank Mr. Mark Malloch Brown of the United Nations Development Programme for his interesting statement this afternoon, which injected the development perspective into our debate.

The Secretary-General dedicated his inaugural statement at the fifty-ninth session of the General Assembly to underlining the importance of law and justice at the national and international level. This is not the first time the Security Council has analysed the question of the rule of law and justice. In our opinion, it is fitting that, under the presidency of the United Kingdom, we should again follow up on developments in this field.

One year ago, Argentina concluded its statement in the debate on this same topic with the following words:

> "imagination, flexibility and resources will always be indispensable. But perhaps the most important of all is for the Security Council, the Secretariat and all organs of the United Nations to institutionalize once and for all in their procedures, strategies and policies the elements that the United Kingdom has invited us to consider today. Justice and the rule of law are prerequisites for community life. Peace is not possible without them". (*S/PV.4835, p. 29*)

The Secretary-General, in the report before us today (S/2004/616), has presented a series of forward-looking recommendations along these lines. We consider them essential for the future efforts of the United Nations in strengthening the rule of law and the reign of justice in societies where conflict has taken place or exists and in places where institutions have collapsed.

As stated in the report, the United Nations has accumulated great experience in the task of reconstructing peace after conflict, such as in Timor-Leste and Kosovo. We know that this task has not been easy. The United Nations is also committed to it in Haiti. It is important, then, not to waste the experience but to transform it into something productive.

One specific point in the report that we would like to emphasize, is that, as the Secretary-General noted, the United Nations, and the Security Council, in particular, must conduct a careful analysis of specific needs in terms of the rule of law and justice in every country hosting peacekeeping missions or assistance programmes. Such an analysis is also necessary in order to identify the part to be played by the United Nations in peacekeeping operations. Peacekeeping operations, especially the most complex ones — and most of the current operations are complex — must include from the outset strengthening the rule of law components within their mandates.

As the Secretary-General has stated, we must avoid the introduction of foreign models. The affected societies must have ownership of the reconstruction process, and in that sense, the active participation of civil society is fundamental.

We must, therefore, work on preparing a set of practical proposals or guidelines to assist and guide the work of the organs and areas involved. The opportunity to do so is here and now, while we are all involved in the process of reforming and strengthening the Organization. This is why the recommendations in paragraphs 64 and 65 of the report should be carefully followed up. We must find a suitable way of putting them into practice, so that the ideas expressed in the report of the Secretary-General and this debate can produce tangible results.

We consider that recommendations (a) and (b) of paragraph 65 should serve as the initial point of departure for work on the institutionalization of the issue in the agenda of the United Nations. In recommendation (a), the Executive Committee on Peace and Security is asked to craft proposals to improve the ability of the United Nations system to support the rule of law and justice. In recommendation (b), the integration of those considerations into the planning of peacekeeping missions is requested.

The legal basis for United Nations response and international action must include, in addition to the Charter, the legal framework at the international level covering human rights, international humanitarian law, international criminal law and the international rights of refugees.

We would like to emphasize that the international community can currently rely on a number of instruments created to bring to justice the perpetrators of serious violations of human rights and humanitarian law, in keeping with that legal framework.

The Security Council, in a creative interpretation of its powers under article 39 of the Charter, has created special tribunals to judge the most serious crimes committed in the former Yugoslavia and Rwanda and to respond to situations in Sierra Leone, Kosovo, Timor-Leste and Afghanistan. We must mention the important role played by truth and reconciliation commissions, as in the case of Sierra Leone.

However, the main instrument available to the international community in its fight against impunity is the International Criminal Court (ICC). We agree with the Secretary-General that it is extremely necessary to promote and support the Court's central role in the effort to strengthen the rule of law.

We must ensure that the Court has the necessary resources to be able to fulfil its functions. During these early years of its existence it is indispensable to support the work of the Office of the Prosecutor in the investigation and to prosecution of persons responsible for war crimes, crimes against humanity or genocide, whenever national authorities are unable or unwilling to do so.

International tribunals can act as a deterrent within the scheme of international security that has emerged over the last few years. They are a useful tool in the maintenance of international peace and security, which is the responsibility of the United Nations, and in particular of the Security Council.

To our way of thinking, there are no prefabricated solutions. That is why, in addition to the measures which the United Nations and the international tribunals take in order to strengthen the rule of law and justice, it will also be of vital importance to carefully analyse and learn from the experience accumulated at the national level in individual countries.

Argentina is a democracy where the rule of law prevails. The institutional stability which our country has enjoyed for more than 20 years demonstrates its strength. We therefore believe that our experience in successfully transitioning to democracy, as well as the experience of other States Members of the Organization in that respect, could be of use to those societies that are undergoing the process today.

The President: The next speaker is the representative of Singapore, to whom I give the floor.

Mr. Menon (Singapore): I would like at the outset to thank you, Sir, and the delegation of the United Kingdom, for leading the effort on this important subject, which has culminated in the excellent report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616).

In his statement to the General Assembly two weeks ago (see A/59/PV.3), the Secretary-General pointed out that the rule of law starts at home, but that in too many places it remains elusive. He further said that it is by reintroducing the rule of law, and confidence in its impartial application, that we can hope to resuscitate societies shattered by conflict. With those few words, the Secretary-General put his finger on a major underlying cause of conflict and identified the approach to putting a country back on its feet. Nevertheless, we should not underestimate the immense difficulties of trying to put a post-conflict State back together once its political, economic and social fabric have been torn apart. It can sometimes be close to an impossible task — like all the King's men trying to put Humpty-Dumpty together again.

It is therefore apt that the Secretary-General stressed in his report that prevention is worth significantly more than cure. We share the Secretary-

General's view on that matter, as well as the views expressed by the Administrator of the United Nations Development Programme, Mr. Mark Malloch Brown, an hour ago on the need to anchor justice and the rule of law in societies.

As a multiracial, multireligious nation, we in Singapore have never taken racial, religious and political stability for granted and have always made conscious efforts to promote social cohesion through sharing the benefits of progress, equal opportunities for all and a meritocracy — the best man or woman for the job, especially as leaders in Government. Similarly, we have always made it a point to ensure that the rule of law is applied indiscriminately both to citizens and to non-citizens. Singapore therefore welcomes the call to strengthen the rule of law in the administration of justice in all States, and the steps put forward to address issues of transitional justice in conflict and post-conflict societies.

The Singapore delegation has been involved with a number of other delegations and external organizations, such as the International Center for Transitional Justice, in a series of useful discussions and exchanges of views on the experiences of the international community on this subject, especially over the past 10 years. I would like to make some broad observations on this subject of transitional justice and the rule of law, in relation to which I would like to highlight two aspects.

First, in a post-conflict situation, the challenge of filling the rule of law vacuum is a key one for many United Nations peace operations. The report recognizes the large and growing demand for expertise in assisting post-conflict countries to establish transitional justice processes, restore shattered justice systems and rebuild the rule of law. That is why it is vital that the United Nations develop a framework to tap existing external expertise and resources to complement the Secretariat's in-house experience. In post-conflict situations, there is also often a need to introduce immediately a transitional set of laws, if the old bodies of law, where they existed, had been unfair, abused or otherwise discredited. In this regard, having a broad set of internationally-accepted transitional criminal codes, which should preferably have some built-in flexibility to allow adaptation to the different local contexts, could be invaluable to post-conflict work.

Together with that, where a culture of the rule of law has been absent, one may need to provide for some form of public education to instil such a culture — a culture that most of us who live in functional societies may take for granted.

The second aspect is that of transitional justice. That should be neither an end in itself nor an exercise aimed at salving the international community's conscience for its past inactions. Rather, it should take into account the best interests of the victims of violence and grave injustice, while at the same time serving a broader goal of sending a signal to all would-be perpetrators of large-scale abuses that the era of impunity is over. In this regard, it is important to bear in mind that no two societies and situations are the same, and that there are no model answers that one can simply apply to a post-conflict situation.

The institutions and practices of established States have evolved over time — sometimes over centuries — while those of most new States, including States in a post-conflict situation, have had to be either created from scratch or elaborated immediately and put into place. This is clearly not the best way to get things done. It is therefore important that national stakeholders be closely consulted with a view to arriving at a solution that best serves the interests of the people in terms of transitional justice, bearing in mind what would work best to help heal wounds, using the limited resources available and taking account of the urgent competition for these resources, and, where applicable, the risk of its impact on fragile peace processes.

On the last point, unfortunately, the reality is that in many post-conflict situations the international community lacks either the political will or the capacity to ensure the disarmament of armed groups, which remain a source of lawlessness and a threat to peace and stability, thereby creating the potential of renewed conflict. It would be counter-productive for us if, in our haste and impatience to pursue transitional justice, we were to cause a return to conflict, renewed violence and suffering.

The Secretary-General's report has also rightly pointed out that the international community, in helping to bring about transitional justice and the rule of law, should bear in mind that its role is not to create international substitutes for national structures but to help build domestic justice capacities. This is

important because the goal is to leave in place a sustainable independent system that works, even if such a goal can be attained only after years, rather than months, which is especially likely to be the case if there is a need to train the local judiciary and judicial personnel from scratch.

Questions have been asked as to what justice, especially transitional justice, is worth. This is not an easy question to answer. In this regard, I would like to cite the reply to a question that the British Broadcasting Corporation posed, in an interview on 4 October, to William Shawcross, a long-time advocate of bringing the Khmer Rouge to justice. After noting that the Cambodian Government had estimated that the trials under the Cambodia Tribunal were going to cost $50 million, Mr. Shawcross said: "that raises another very interesting question: would that money not be better spent for Cambodia by reinvigorating and restoring the Cambodian judicial system?"

I leave that as food for thought. But before I conclude, I would like to note that what we — that is, a small number of delegations, including members of the Security Council — have been doing on this issue can be qualified as norm-making. This is why my delegation welcomes this open debate. It is appropriate that this issue now be discussed by the General Assembly, the principal norm-making body of the United Nations — especially if we acknowledge that the rule of law is something that should be mainstreamed into every part of the United Nations system, which will require the universal support of all Member States. In this regard, I understand that discussions on this issue are being envisaged for later this month in the Sixth Committee. My delegation welcomes that development.

The President: The next speaker is the representative of Burundi, to whom I give the floor.

Mr. Nteturuye (Burundi) (*spoke in French*): The delegation of Burundi welcomes the initiative taken by the presidency of the United Kingdom, which, for the second year in a row, is organizing a debate on justice and the rule of law. We would also like to welcome the Secretary-General's very clear-sighted report (S/2004/616) around which we are basing our debate.

In order not to take up too much time, I shall deliver a condensed version of my statement and distribute the full text.

This debate is taking place more than four months after the adoption by the Council — on 21 May 2004 — of resolution 1545 (2004), which authorized the deployment of the United Nations Operation in Burundi. It is also taking place a few days after the deposit, here in New York on 21 September 2004, of the instruments of ratification of the Statute of the International Criminal Court by the Government of Burundi.

Last year I concluded my statement to the Council by affirming that Burundi needed a form of justice that would bring reconciliation and healing, after having emphasized that, in order for it to come about, such reconciliation must be based on truth and justice.

Since that time, provisional immunity granted to political leaders returning from exile, as well as the release of hundreds of political prisoners, as recommended by an international ad hoc committee, have caused upheaval in the prisons of my country. Indeed, prisoners from various political groups in the country have come together and denounced what they are calling a justice that protects those who gave orders and punishes those who followed orders. They have threatened to make public all the secrets they hold with regard to the responsibility of certain current leaders for the violence that has afflicted the country.

What does that mean? It means that the provisional immunity granted political leaders is an extremely delicate political instrument in a situation of internal conflict where a manipulating elite is already hiding behind mass actions. It also means that the peace process is failing, if the high-level officials accused or convicted for playing a role in the national tragedy were those primarily responsible for the elections. This is even more dangerous when the elections could lead to a situation where the executioners are rehabilitated and given popular legitimacy, while the victims are once again threatened — more so than before — and are forced to seek shelter, which they would not find, when they were expecting reparation and rehabilitation.

The Security Council, which was asked in the Arusha Peace Agreement to set up an international judicial commission of inquiry, first preferred to send to Burundi an assessment mission from the Secretary-General last May. I was pleased to learn this morning that the report of the assessment mission is finally

going to be made available very soon. The mission was able to observe on the ground the strong desire of Burundians of all political stripes to see the commission of inquiry established as soon as possible.

The peace agreement also provides for the creation of a truth and reconciliation commission. The texts creating that commission have just been adopted by the National Assembly, and the Senate will approve them as well during its current session.

Burundians are beginning to worry, because they still remember another piece of work left unfinished by the United Nations: the report of the International Commission of Inquiry on Burundi (S/1996/682), which set out very serious conclusions on the identification of those behind what the same report called acts of genocide. The report was shelved instead of leading to concrete action or being reviewed or supplemented, if the Council deemed necessary. The Council's lack of action on its own report created a situation in which some Burundians now refer to the conclusions of that report while others reject it.

Another investigative report came out two years later. What I have in mind is the report (S/1998/1096, annex) that assembled information on the sale or supply of arms to those Rwandans based in the Democratic Republic of the Congo who were responsible for genocide. The report not only confirmed the existence of deliveries of arms to those mass killers, but it contained unpublished documents on cooperation between those killers and the Burundian rebel movements, also located in the Democratic Republic of the Congo. No action followed that report, which nevertheless shed light on the threat of genocide that still exists in the Great Lakes region, as confirmed by the heinous massacre on 13 August of Congolese refugees in the Gatumba camp in Burundi.

Here again, the Gatumba investigation is dragging its heels. Its conclusions would allow the Democratic Republic of the Congo and Burundi — and even the United Nations and the African Union — to decide on legal and political action to be carried out with regard to the groups responsible for the massacre, in particular the PALIPEHUTU/FNL, which has claimed responsibility for this deed from the very first day and which heads of State of the subregion have now declared to be a terrorist organization.

The Security Council has already shown that it can take strong measures to try those responsible for serious crimes — when, for example, it created the ad hoc international tribunals for the former Yugoslavia and for Rwanda, the Special Court for Sierra Leone and the extraordinary chambers to try Khmer Rouge leaders in Cambodia. For the time being, Burundians are asking only for an international judicial commission of inquiry. When the truth emerges from that investigation and from the investigation to be carried out by the national Truth and Reconciliation Commission, Burundians will be in a position to decide what type of justice should be meted out to the guilty in order to achieve reconciliation. But this United Nations contribution is urgent, because after elections it will be politically delicate to try those who have been elected, who will in fact be tempted to initiate laws that will protect them and whitewash them forever.

Since the deployment of the United Nations Operation in Burundi (ONUB), the Organization has been playing a central role in the follow-up of the peace process in Burundi. The Burundian population hopes that, thanks to the presence and the assistance of ONUB, the peace process will culminate in a genuine peace that will lay the foundation for economic reconstruction and national reconciliation. Because ONUB is deployed in the field, it is, de facto, a credible point of reference and the international community's legitimate representative in Burundi. That is why the head of ONUB, the Special Representative of the Secretary-General, is trying, in addition to mediation, to coordinate and synchronize the activities of external and internal partners for peace in Burundi. The Government of Burundi reiterates its commitment to cooperate fully with Ms. McAskie, who is leading ONUB on behalf of the Secretary-General and the Security Council for the cause of peace in Burundi and on its borders.

The President: I now give the floor to the representative of India.

Mr. Sen (India): We congratulate you, Sir, on your assumption of the Council presidency for the month of October. We also congratulate Ambassador Juan Antonio Yáñez-Barnuevo and other members of the Spanish delegation for their able stewardship of the Council in September.

My delegation welcomes this opportunity to participate in the open Council to discuss the item "Justice and the rule of law: the United Nations role".

As your compatriot and fellow diplomat turned political leader, Paddy Ashdown, famously observed on 28 October 2002 in his *New York Times* article "What I learned in Bosnia", "In hindsight, we should have put the establishment of the rule of law first, for everything else depends on it."

To adhere to the time limit that the President set earlier, I shall outline only the essential points of my statement, since the full text has been circulated.

We have read with interest the report of the Secretary-General (S/2004/616) on the rule of law and transitional justice in conflict and post-conflict societies. We commend the Secretary-General for emphasizing the need to eschew a one-size-fits-all formula and the importation of foreign models, and for stressing the importance of basing our work on national assessments, national participation and national needs and aspirations.

The temptation to impose external models without the required sensitivity to cultural and other factors is sometimes strong on the part of many. The emphasis on international norms and standards often leads some Member States, international organizations and civil society organizations down that path.

Even as we underscore the importance of respecting international standards, the assistance rendered to a particular society recovering from conflict must necessarily take into account its sociocultural specificities and particularities so that the support rendered by the international community becomes durable and sustainable. If the gulf between the legal structure and social norms in that society is too wide, giving effect to legal prescriptions could carry far too high a socio-political cost.

To our mind, the specific function of the legal system is crucial. Many conflicts arise from clan, ethnic, economic and other group grievances. It is important to address these through the process of the administration of law itself. Segmental entities can be transformed into healthy political competition that sustains constitutional order. The constitutional expert Granville Austin therefore has rightly said: "This is messy, but it is democracy and social revolution in action." Some traditional liberal Western models, therefore, may not be adequate. A multicultural, socially activist legal arrangement would, in such cases, be far more appropriate.

We agree with the Secretary-General that the careful sequencing of activities relating to rule of law reforms and transitional justice with post-conflict elections is vital not only to ensure their success and legitimacy, but also to preserve the fragile peace processes in societies emerging from conflict. United Nations peacekeeping operations are envisaged as short-term interventions. While the idea of incorporating components of rule of law reforms and transitional justice activities in a United Nations peacekeeping operation may be unexceptionable, we ought to remember that building the rule of law and fostering democracy are long-term processes. These are beyond the capability of personnel traditionally involved in peacekeeping operations. However, we strongly believe that they can lay a vital foundation if they embody, in their outlook and behaviour, a long-standing democratic and multicultural tradition.

In the past decade, the United Nations has resorted increasingly to establishing a wide range of special criminal tribunals, including ad hoc criminal tribunals, as subsidiary organs of the Security Council. Their track record has been mixed. In some cases, they have succeeded in establishing accountability for perpetrators and in instilling greater public confidence in post-conflict societies that have enabled those societies to move forward. The exact balance between retributive justice and the need for reconciliation through an amnesty should be determined not a priori or ideologically, but strictly by pragmatic considerations of establishing an enduring peace.

The Secretary-General is also correct in being chary of a dependence on voluntary contributions for the financing of United Nations tribunals, not only because of its ephemeral nature, but also because of the undue influence that this could give to donors in dealing with vulnerable local institutions normally characteristic of post-conflict societies.

Any meaningful capacity-building is possible only when the society concerned establishes its governing institutions and supreme law and moves into the institution-building phase. National stakeholders have to set their reform vision and agenda for that purpose so that they can claim local ownership. That work can be done both multilaterally and very effectively on a bilateral basis as well.

I should also like to refer in that context to the capacity and expertise within the United Nations

system in the area of the rule of law and transitional justice. We find that such expertise exists not only in different parts of the Secretariat, but also in the secretariats of the funds and programmes. The need for different parts of the Secretariat, including those of the funds and programmes, to work synergetically and in cooperation with each other rather than in competition, cannot be overemphasized. There has been some talk of creating an independent structure dedicated exclusively to that question. We are not yet convinced of the efficacy of such an approach. At this stage, better coordination among existing units and optimal utilization of the existing resources are called for.

The role of the United Nations in supporting the rule of law and transitional justice in post-conflict societies must involve assistance through a system-wide, coherent, needs-based approach which can result in the consolidation of security and peace, social justice and democracy. In all those areas, the United Nations should play a supportive and facilitating role.

The President: I thank the representative of India for the way in which he set out the main points of his circulated speech. I commend that to colleagues.

I now give the floor to the representative of the Republic of Korea.

Mr. Kim Sam-hoon (Republic of Korea): I would like to thank you, Sir, for initiating this important discussion of the rule of law and transitional justice. As the Secretary-General made clear in his address to the General Assembly last month, we are duty-bound to protect, enhance and extend the rule of law to all people in all places, including societies that are making the difficult transition from conflict to peace.

In that regard, we welcome the report of the Secretary-General as being comprehensive and realistic in pointing the way forward. The Secretary-General's recommendations in paragraph 64 are worthy of serious consideration by Member States and the Security Council. In particular, we support the emphasis on respect for the human rights of those groups that are most vulnerable to conflict, such as women and children.

We wish to call attention to important developments in the way that the Security Council has functioned since the end of the cold war. First, we are pleased to note that cooperation among Security Council members has increased substantially as the Council discharges its solemn responsibility to maintain international peace and security. Secondly, the conflicts addressed by the Security Council since the early 1990s have tended to be intra-State conflicts stemming from failing or failed States, rather than the inter-State conflicts that have traditionally been the Council's focus. Those conflicts within States raise a different set of issues and require a different approach. In that regard, we welcome and support the Security Council's recent trend towards integrating transitional justice and rule-of-law concerns into the mandates of United Nations peace missions.

Indeed, the rule of law, the promotion of human rights, the delivery of justice and the establishment of democratic institutions can no longer be considered luxuries, if ever they could. Rather, they are indispensable requirements for restoring peace and preventing conflict-ravaged societies from relapsing into violence and chaos. Without a reasonable degree of justice and rule of law, peace is simply not sustainable.

Peace missions in conflict and post-conflict societies must integrate into their operations three key aspects of justice and the rule of law. These are re-establishing the legal order that existed prior to the conflict, undertaking reform of the justice system, both substantively and procedurally, and administering transitional justice fairly and effectively in a way that facilitates the healing process and expedites national reconciliation. Peace missions must also engage in strategic planning to ensure that the justice system does not break down once the mission is terminated, and as such, it is imperative that peace missions work towards establishing sustainable national capacities for justice administration.

Those, however, are extremely daunting tasks that can take a long time to achieve. There is no internationally established procedure that can be applied uniformly to all conflicts. Ensuring justice is also a very expensive undertaking, as evidenced by the ad hoc tribunals for the former Yugoslavia and Rwanda. In that vein, the full operation of the International Criminal Court as an independent, effective and fair permanent criminal tribunal is a most welcome development that will greatly enhance the administration of justice. The Republic of Korea hopes to see the Court attain universality at an early date.

In order to deal with the complex socio-economic problems in conflict and post-conflict societies, we encourage more systematic coordination among all international and local actors on the ground, including the Security Council, United Nations peacekeepers, United Nations funds and programmes, civil society, non-governmental organizations and donors.

The Security Council, with the unique authority and power entrusted to it by the United Nations Charter, has been the guiding force behind concerted international efforts at post-conflict peace-building. However, we share the concern that the Security Council is currently overburdened, having increasingly become involved in the broad and time-consuming task of nation-building. Furthermore, because it can be difficult to determine when that task is complete, or even what would constitute completion, the Security Council may not always be able to articulate exit strategies where necessary.

In that context, we must examine the long-term fitness of the Security Council for these ever-expanding tasks. We look forward to the ideas and recommendations of the High-Level Panel on Threats, Challenges and Change regarding possible reform of the way the Security Council interacts with other United Nations bodies, in particular the General Assembly and the Economic and Social Council, and regarding possible changes in the structure and functions of major United Nations bodies.

In addition, the Republic of Korea deems worthy of exploration the Finnish-German-Jordanian joint proposal to create a central unit within the Secretariat to coordinate the rule-of-law components of peace-building efforts.

In conclusion, the Republic of Korea reiterates its continued support for the Security Council, and for the United Nations as a whole, in their steadfast efforts to ensure that justice and the rule of law are extended to every human being in every society.

The President: I now call on the representative of Costa Rica.

Mr. Stagno Ugarte (Costa Rica) (*spoke in Spanish*): Allow me, first of all, to thank you, Mr. President, for having convened this open debate of the Security Council to take up the role of the United Nations in promoting justice and the rule of law. I would also like to thank the Secretary-General for his valuable report, as well as the delegations of Germany, Finland and Jordan for the informal working document they have prepared as a contribution to our deliberations.

As the Secretary-General rightly stated in his report, peace, justice and democracy are fundamental prerequisites that reinforce each other. There can be no peace if there is no democracy. There can be no democracy if there is no legal certainty and an effective and impartial judiciary. There cannot be justice without peace and a legitimate and responsible Government. In that context, the promotion of justice and the strengthening of the rule of law are essential elements in the promotion of international peace and security, in the domestic stability of countries that have experienced armed conflict and in the sustainable development of all the nations of the world.

The concept of the rule of law goes beyond the mere administration of justice when legal standards are violated. The rule of law is an essential aspect of democratic governance. The rule of law means that all persons, physical and legal, must be subject to a body of clear, precise and pre-existing laws that provide legal clarity as to what types of actions are prohibited and that establish a framework of minimum guarantees for an individual's freedom of action. It is also essential that Government authorities be subject to a rigorous set of standards that circumscribe the scope of their actions and protect private citizens from any abuse of power on the part of the State.

In that connection, we can identify three different dimensions of the rule of law: the legislative, the administrative and the judicial. From the legislative perspective, the rule of law demands transparency, clarity and moderation in the promulgation of laws. Legislation must protect and guarantee the fundamental rights and freedoms of all individuals. From the administrative point of view, the rule of law requires a conscious effort to circumscribe the use of State authority in order to protect an individual's sphere of action. Any abuse of power or instance of corruption by public officials is a violation of the rule of law. From a judicial point of view, the rule of law must provide remedies in order to correct any violations or harm done when the legal order is violated, as well as to protect the fundamental rights of individuals.

Promoting the rule of law in transitional situations at the end of armed conflicts requires action

in all three dimensions. The United Nations must assist communities in transition to adopt a clear-cut, fair and impartial legal framework that guarantees full respect for the human rights of all citizens. From the administrative point of view, the Organization must promote responsible governance that democratically responds to the aspirations of people while providing genuine accountability for its own activities. From the judicial perspective, the international community must lend assistance and technical support to courts and police in order to increase their effectiveness, legitimacy and independence while protecting individual rights. As the Secretary-General correctly stated in his report, all those elements are interdependent, and all require joint action.

The administration of justice in transitional situations is particularly important in cases where grave violations of international humanitarian law have occurred: genocide, crimes against humanity and massive violations of human rights. Such situations require both justice and reconciliation. My delegation fully agrees with the Secretary-General that we must never extend amnesty to the perpetrators of such crimes. At the same time, we believe that the Organization must promote any mechanism for reconciliation and social reintegration that will make it possible to overcome the trauma of armed conflict. To the extent possible, every society should design its own mechanisms for reconciliation.

With regard to serious cases in which it is necessary to ensure the administration of justice, the United Nations must ensure that legal processes fully respect the rights of accused persons to due process and that places of detention are in full conformity with minimum standards for the treatment of prisoners. Costa Rica is extremely concerned at seeing traditional mechanisms being used to dispense justice, for those usually do not include minimum guarantees to protect the basic rights of accused persons.

Costa Rica fully supports the Secretary-General's recommendation that the Organization should not participate in any tribunal that can hand down a death sentence.

In cases in which a State is either incapable or unwilling to try the perpetrators of the most serious crimes, the international community must — and I emphasize must — have recourse to the International Criminal Court, which is a standing impartial body with judges who enjoy the highest possible moral and professional qualities that can provide the correct administration of international justice. The International Criminal Court is a bulwark against impunity and legal uncertainty. We call on the Security Council to in future make full use of the option of submitting particular cases to the International Criminal Court.

As the Secretary-General has said, it is now essential that the international community provide this new institution with the required resources and support so that it can investigate, prosecute and try those responsible for war crimes, crimes against humanity and genocide. We appeal to everyone to continue strengthening the Court.

My delegation objects to any future establishment by the United Nations of special or mixed criminal tribunals. First of all, the ICC is a viable and economic alternative. Secondly, while such tribunals of a special nature did have a salutary effect at the outset, their costs have snowballed, and they have fallen prey to countless difficulties that have prevented the prompt and effective administration of justice. Mixed tribunals are even more dubious, because they do not have sufficient budgets; and, despite all the efforts of the Secretariat, they do not always provide the minimum guarantees of due process.

Furthermore, we fully agree with the delegations of Finland, Germany and Jordan in saying that institutional reform is necessary so that this Organization can contribute effectively to the promotion of justice and the strengthening of the rule of law.

We cannot allow a task of such importance to be spread out among 11 different organs and departments. We agree with the aforementioned three delegations that this task must be assigned to a centralized body. However, such an administrative streamlining should not create any further confusion in the chain of command or in the internal hierarchy of the Secretariat.

From this perspective, my delegation supports option C in the working paper prepared by the three delegations — in other words, my delegation supports the creation of a new division entrusted with the promotion of justice and strengthening the rule of law.

Finally, promotion of justice and strengthening the rule of law cannot be confined only to post-conflict

situations. Justice is a delicate organism that requires, in all climates, and under all latitudes, constant care if it is to flourish. The promotion of justice and strengthening the rule of the law by the United Nations cannot be limited only to exceptional situations falling under the Security Council's responsibilities. This should not be the case. Our Organization must promote justice and the rule of law in every single nation of the world. From this perspective, it is worth considering the possibility of including an item on the rule of law on the General Assembly's agenda.

The President: From the viewpoint of the presidency, I would say to the representative of Costa Rica that we share totally that last sentiment: that rule of law applies to everybody, and that all organs and agencies of the United Nations have an interest in it. It is not the exclusive purview of the Security Council — not by any means. This debate reflects the interest of the Security Council in the subject. But so does everyone else have an interest.

I now give the floor to the representative of Japan.

Mr. Haraguchi (Japan): My Government places importance on the consolidation of peace in unstable post-conflict societies. In our view, efforts to realize justice and the rule of law in the transitional period until peace is consolidated are of the utmost importance. However, we must not forget that societies in the transitional period are extremely fragile. It is, therefore, necessary to search for the best way to achieve justice and the rule of law while maintaining ownership by the people. In the long run, capacity-building will be the most important issue. In the short term, various elements need to be taken into consideration. On occasion there may be cases in which things could go wrong if they are not undertaken with a high level of flexibility.

From such a perspective, Japan wishes to focus on three points. First, it is important for Member States to exert efforts in establishing justice and the rule of law within their own borders, in parallel with assistance extended by the United Nations. Since the United Nations is a world forum enjoying the most universal membership, a framework achieved through extensive discussions within the United Nations gives us every right to expect the full cooperation of the international community in its implementation.

Efforts to achieve justice and to establish the rule of law in peacetime provide a basis for preventing conflicts from recurring. Furthermore, at times when the United Nations is conducting its operations in failed States and other problem areas, or when the United Nations becomes responsible for administration on a temporary basis in the transitional period, its activities sometimes play a direct role in the establishment of the rule of law. These cases, however, should be regarded as exceptional, and the United Nations should make every effort to transfer primary responsibility to the administrative organization concerned at the earliest possible opportunity.

Secondly, when the United Nations undertakes assistance in the establishment of justice and the rule of law, it is essential to pay due respect to the support and participation of the people of the recipient States. For example, in Timor-Leste, while the serious crimes of the past are being prosecuted by the courts through the legal process, the activities of the Commission for Reception, Truth and Reconciliation, whose aim is to realize reconciliation through earnest reflection on past conduct, are proving to be effective. The work to establish the rule of law serves not only to punish the criminals but also to discourage the commission of such crimes in the future and, thereby, to prevent conflicts from recurring.

If we want the results of such work to take root in the region, it is indispensable for the people of the region in question to have a sense of ownership regarding the significance of the rule of law. For that reason, we should not overlook the importance of publicity and educational activities.

Thirdly, the significance of the International Criminal Court (ICC) should not be underestimated in any way. However, it should be borne in mind that the ICC is not a panacea for all humanitarian tragedies. In particular, the atrocities that occurred prior to the establishment of the ICC in 2002 still need to be addressed. In this connection, when societies or States concerned were incapable of reacting appropriately in the immediate aftermath of conflict, the international community established tribunals, such as the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR) and the Special Court for Sierra Leone. These courts fulfil multiple purposes — bringing to justice persons allegedly responsible for serious violations of international humanitarian law,

establishing the foundation for post-conflict public order and realizing universal justice.

In Cambodia, work is continuing towards the establishment of extraordinary chambers within the existing national court, in cooperation with the United Nations, for the prosecution of Khmer Rouge leaders. One of the lessons we have learned from the management of ICTY and ICTR is that the administrative organizations of tribunals financed through assessed contributions can grow to be far bigger than is necessary. The international community is obliged to design a structure that will yield maximum efficiency and effectiveness for international tribunals. My Government will continue to closely monitor the activities of the ICTY and the ICTR to help ensure that their intended objectives will be achieved through the endorsed completion strategies.

Japan also has been working on the early establishment of the Khmer Rouge trials extraordinary chambers with assistance from the international community, and welcomes the fact that the Cambodian National Assembly recently approved an agreement with the United Nations concerning the prosecution of former Khmer Rouge leaders. Japan expects that further steps will be taken towards its prompt ratification by Cambodia. The establishment of these chambers will be an important step for justice and the rule of law in Cambodia, and, for that reason, Japan urges Member States to cooperate to the best of their abilities to assure the success of these trials.

The President: I thank the representative of Japan for shortening his speech in order to conserve time.

I now give the floor to the representative of Peru.

Mr. De Rivero (Peru) (*spoke in Spanish*): Mr. President, I should like to congratulate you on your assumption of the presidency of the Security Council and in particular for your initiative in convening this public meeting on the role of the United Nations in the promotion of justice and the rule of law. I am also grateful to the Secretary-General for his report on this important topic.

The rule of law at the national level translates into a State based on the rule of law. At the international level, it is the multilateralism we find in the Charter of the United Nations. It promotes stability and predictability in the international system and is a key factor in the maintenance of international peace and security and respect for human rights. Ultimately, we cannot promote the rule of law if the Charter of the United Nations is not respected.

The international community, fortunately, has expressed its recognition of the importance of the rule of law and the need to combat impunity through the creation of the International Criminal Court. I would like to reaffirm here my country's commitment fully to support the Court.

Empirical experience has shown that justice and the rule of law are not easy to achieve. They cannot be brought about overnight, least of all ,a societies that have never practiced democracy, where institutions are weak, and where the values espoused by particular groups prevail over the law or a national social contract.

In many cases, the establishment of the rule of law represents a serious cultural problem — perhaps more cultural than political — for it touches on the self-respect of a people. It is therefore a very complex, lengthy and sometimes historic endeavour that requires the resolute support of the international community — which we are providing — but also it requires a commitment on the part of a society itself, particularly in the case of civil conflicts.

Cultural changes are therefore required that lead to profound transformations in the legal, judicial, police and penal-law spheres, and, above all, the dissemination of a culture of respect for human rights and tolerance among the people who wish to carry out such reforms.

That is why the challenge is so great. It involves promoting tolerance and establishing the rule of law in societies where social marginalization has been widespread, where there has been no social contract to speak of, or, if one existed, it has been destroyed as a result of political, ethnic or religious conflicts.

That is why Peru believes that any proposal aimed at re-establishing the rule of law must take into account the situation of each conflict-fractured society, because not all are the same. As the Secretary-General has said, we cannot import solutions from other realities, as they do not necessarily produce good results.

In the case of my country, the Truth and Reconciliation Commission was created in June 2001

to assign responsibility for the massive violations of human rights that took place from 1980 to 2000. The Commission has submitted a comprehensive plan for reparations, and the Government has begun to implement it formally through a collective plan for peace and development for the years 2004-2006. In parallel, victims are seeking justice on an individual basis before the competent national courts.

At any rate, in re-establishing justice and the rule of law, it is extremely important for the United Nations to elaborate preliminary proposals that take account of the national realities of the country that has lived through the conflict. The proposals should be based on wide-ranging consultations in which all national actors can participate. All of these inputs should be considered in crafting a strategy.

Such a methodology, based on broad-ranging consultations, should also be used later on, during the implementation phase and during the ongoing assessment of the goals laid down in the strategy. Only thus can we systematically bring about the re-establishment of the rule of law in societies that have disintegrated as a result of civil conflict.

We hope that the Council will adopt the recommendations set out in the report of the Secretary-General, which emphasize the non-imposition of external models and the need for prior assessment of national needs on the basis of a broad process of consultations at the national level.

Peru welcomes the Secretary-General's intention to ask the Executive Committee on Peace and Security to propose concrete measures on justice and the rule of law in post-conflict societies. We hope that such measures will be submitted for consideration by all States Members of the Organization.

Finally, I would like to say that, in almost all strategy studies undertaken nowadays, social marginalization is considered to be one of the main causes of civil war. Social marginalization means that political, ethnic and religious differences evolve into extreme rivalries and hatred, leading to crimes against humanity, which is what we here are trying to prevent.

That is why the social marginalization dimension must be taken into account in the context of any comprehensive approach to the restoration of the rule of law and justice in societies that have undergone serious civil conflicts.

The President: The next speaker is the representative of Fiji, to whom I give the floor.

Mr. Savua (Fiji): The Republic of the Fiji Islands subscribes to what was stated by the Secretary-General during the opening of the general debate of the fifty-ninth session of the General Assembly on the subject of the rule of law. As Members of the United Nations, we ought to look again into our collective conscience and ask whether we are doing enough to promote and preserve this universally accepted principle. We would also like to thank the Secretary-General for his report (S/2004/616) of 3 August 2004. We express our strong support for the International Criminal Court (ICC) and its plans to make a significant contribution to advance justice and the rule of law.

Fiji, like many others, has had its own experience with the breakdown of law and order; our country and our people suffered, and we are still recovering. We therefore appreciate the value and need for the upholding and preservation of justice and the rule of law.

In that regard, Fiji will draw guidance from paragraph 40 of the Secretary-General's report, which states that: "domestic justice systems should be the first resort in pursuit of accountability". The principle of complementarity is indeed at the heart of the Rome Statute. In addition, in paragraph 49, by encouraging States parties to implement the Rome Statute in their national legislation, the ICC serves as "a catalyst for enacting national laws against the gravest international crimes" and thereby strengthens national legal and judicial systems and their capacity to respond to justice and rule of law-related challenges.

We see the United Nations involvement in conflicts and post-conflict reconciliation and transitional justice as the execution of its obligations as enshrined in the Charter. However, given the complexity of the problems of today's world, a lot remains to be done. The United Nations requires our total commitment and support in order for it to satisfactorily achieve its obligations.

While Fiji acknowledges and commends the good work so far exerted by the United Nations in this field, we are at the same time cautiously aware that the challenges it faces are often compounded by the fact that the United Nations is frequently called upon to plan the restoration of the rule of law in peacekeeping and peace-making operations on extremely short

notice. Consequently, only short assessment visits — carried out with minimal human and financial resources — are made to the host country, although it is on the basis of those visits that the United Nations formulates its plans. There is, in our respectful assessment, a pressing need to address those impediments we have identified. Fiji would therefore support any suggestions for the strengthening of United Nations capacities in that regard. The early identification and close monitoring of countries or regions with the potential for conflicts to break out, the setting up of necessary measures and the determination of the appropriate mechanisms for addressing the root causes of differences, can and will assist in the prevention of any escalation of violence that may ultimately lead to horrific acts of genocide, crimes against humanity and war crimes.

Admittedly, some of our people, given the splendour of our geographical isolation, often see the role of the United Nations in the field of the rule of law and transitional justice as being one of restoration. Heinous and despicable acts of violence are committed and numerous human lives are lost before we insist on restoring order and normalcy. Justice and the rule of law are sacred when they are experienced by the living. We agree with the Secretary-General when he said that "in matters of justice and the rule of law, an ounce of prevention is worth significantly more than a pound of cure" (*S/2004/616, para. 4*).

The safety of United Nations personnel and premises has been a key question surrounding the return of the United Nations to Iraq ever since two bomb attacks against the Organization's offices in Baghdad last year led to the eventual withdrawal of all international staff. The envisioned security structure would consist of four elements, namely, international security staff, protection coordination officers, personal security details and guard units. In that regard and in response to the call by the Secretary-General for the participation of Member States, Fiji is preparing soldiers for deployment this month as personal security details and guard units to the United Nations Assistance Mission for Iraq.

The President: I now give the floor to the representative of Sierra Leone.

Mr. Pemagbi (Sierra Leone): My delegation warmly congratulates you, Mr. President, on your assumption of the presidency of the Security Council for the month of October. In the same vein, we commend your predecessor for his excellent handling of the affairs of the Council in September.

We thank the Secretary-General for his comprehensive report on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616), and applaud you, Mr. President, for the priority you have given to the discussion of that topic, the significance and relevance of which are evident in every part of the world today. As the Secretary-General remarked in his address to the General Assembly at its 3rd meeting, on 21 September, "the rule of law is at risk around the world".

Sierra Leone particularly welcomes the opportunity to participate in this debate because of our bitter experience with the maladministration of justice and abuse of the rule of law before and during our civil war. For nearly 11 years we witnessed the commission of horrendous crimes that resulted in many deaths, injuries and the wanton destruction of property. The experience of my country clearly demonstrates that the absence of the rule of law creates an atmosphere in which egregious crimes against international law can be perpetrated with impunity.

Sierra Leone welcomes the Secretary-General's report and endorses its observations and recommendations. Those observations and recommendations are consistent with the views of Sierra Leone that the rule of law is a necessary prerequisite for and an essential ingredient of justice and accountability.

Sierra Leone believes without a doubt that the International Criminal Court (ICC) is the instrument for bringing to justice alleged war criminals and reinforcing individual criminal responsibility for crimes against humanity, war crimes and genocide. The Government and people of Sierra Leone view those crimes seriously, and because of that we were among the first countries to sign and ratify the ICC Statute, whose objective is to promote the rule of law and deter impunity.

We now have a functioning ICC; nevertheless, we must recognize that much remains to be done to establish a fully effective international criminal justice system, with the ICC at its heart.

Respect for the rule of law within States, at the national level, promotes peace and stability. Equally, respect for the rule of law at the international level promotes international peace and security. Support for the ICC should be seen in that perspective. As the Secretary-General points out in paragraph 49 of his report, there is a great need for universal or near-universal ratification of the Statute of the ICC. In his statement to the General Assembly two weeks ago, he reminded us that every nation that proclaims the rule of law at home must respect it abroad.

My delegation would like to add that while ratification of the Statute is an important contribution to the rule of international law, it is equally important that the Statute be incorporated into domestic law to deter impunity.

Promotion of the rule of law and reform of the administration of justice system, especially in States emerging from conflict such as Sierra Leone, is very expensive. Respect for the rule of law cannot be separated from the problem of the availability of resources. It is not enough to recruit police, magistrates and other law enforcement officers; it is not enough to give them the best professional training, if they lack the means — the basic equipment and logistics — for doing the job for which they are trained. At the same time, they need incentives, such as decent salaries, if only as a weapon for eliminating corruption — that cancer in the body politic of many nations in the world today.

That is why, in that connection, Sierra Leone appreciates the assistance of the International Military Advisory Training Team and the United Kingdom, not only for the training of our security personnel, but also for providing their communications and other logistical needs. The United Kingdom is also supporting, among other things, Operation PEBU, the new housing project for our security personnel. The assistance provided by the United Nations Development Programme and the United Nations Mission in Sierra Leone for the construction of police barracks in the eastern and southern provinces of Sierra Leone is a very good and practical example of the role that the United Nations can also play in the administration of justice and the promotion of the rule of law.

As my Foreign Minister told the General Assembly last week (see A/59/PV.15), the Government of Sierra Leone is struggling, with limited resources, to reform its own system for the administration of justice. The current state of the justice system is reflected in the latest report of the Secretary-General on the United Nations Mission in Sierra Leone (S/2004/724). We have here another example of the important role the international community can play in providing concrete assistance in the promotion of the rule of law.

My delegation is also concerned about the serious financial situation of the Special Court for Sierra Leone, which was established in my country to address impunity and foster respect for the rule of law. Let me reiterate that the efficacy of the Court, and indeed its credibility, could be questioned unless urgent measures are taken to address its problems of funding. The Secretary-General, in paragraphs 40 and 41 of his report (S/2004/616), acknowledged the important role that ad hoc tribunals and hybrid courts such as the Special Court for Sierra Leone play in the quest to end impunity and bring about peace and reconciliation.

In this regard, let me renew our appeal for continued voluntary contributions, as well as the requested subventions for the Special Court from the regular budget of the United Nations. We recall President Kabbah's observation during the formal opening of the Court in March. He said this:

> "This is a Special Court for Sierra Leone, a symbol of the rule of law and an essential element in the pursuit of peace, justice and national reconciliation for the people of Sierra Leone. It is also a Special Court for the international community, a symbol of the rule of international law."

The least we can do for the victims of the heinous crimes committed in Sierra Leone is to ensure that justice is not only done but seen to be done. One sure way of doing this is to provide the Court with the funds it needs to perform its responsibilities.

I have the honour to inform the Security Council that one of the accountability mechanisms established in Sierra Leone, the Truth and Reconciliation Commission, released its report yesterday. The Commission was established with the assistance of the United Nations and the international community. This event is in itself an eloquent testimony of what the international community can achieve in fostering the rule of law. I should like to extend the profound thanks of the Government and the people of Sierra Leone to the international community for this practical

contribution to the rule of law in Sierra Leone and the rule of international law.

In conclusion, let me emphasize that justice and respect for the rule of law are the foundation, as well as the lubricant of the wheels, of peace and stability, development, accountable governance and democracy. By providing support for emerging democracies and post-conflict transitions to establish and/or strengthen mechanisms for enforcing justice and the rule of law, the United Nations will be adding a critical dimension to its efforts for peace. We look forward to the implementations of the recommendations contained in the Secretary-General's report.

The President: I give the floor to the representative of Canada.

Mr. Berry (Canada): Thank you, Mr. President, for providing an opportunity to contribute to this important debate and for the leadership the United Kingdom has shown, including by launching this discussion last year. We join those who have already congratulated the Secretary-General on his excellent report on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616). The report eloquently draws our attention to the challenges that we, the international community, face in a volatile world. Today I would like to touch on a number of issues that are of particular importance to the Government of Canada.

(*spoke in French*)

The rule of law is a profoundly practical idea, one that provides security and structure in a volatile world. While accessible and just laws are the foundation of the rule of law, it is in the consistent and just application of those laws that the rule of law attains its highest expression. To fail to apply the law to grave international crimes such as genocide, crimes against humanity and war crimes is the very negation of the rule of law.

(*spoke in English*)

It is for that reason that Canada urges all States to help strengthen the institutions that are at the forefront of the campaign against impunity. The International Criminal Court (ICC) stands out as the embodiment of the hopes and aspirations of the victims of the most serious international crimes. It offers us the best hope for ending impunity. It is therefore not surprising that it has so rapidly gained the support of a majority of United Nations Member States. We call on the States that have not already done so to ratify and implement the Rome Statute of the International Criminal Court. We also call on the Council to exercise its authority under the Rome Statute to refer situations to the ICC when appropriate. Through cooperation between the Security Council and the parties to the Rome Statute, we can build a reliable and responsible system to bring the world's worst criminals to justice and to protect their victims.

(*spoke in French*)

All too often, the victims of the worst international crimes are women and girls. The fourth anniversary of the adoption of resolution 1325 (2000), on women and peace and security, at the end of this month will provide the Council the opportunity to recall that it has recognized and affirmed the importance of taking gender perspectives into account in all aspects of peace-building. Integrating a gender perspective into the work of international criminal tribunals demands that violence against women be treated with at least the same seriousness as violence against men.

(*spoke in English*)

The work being done by the International Criminal Tribunals for the former Yugoslavia and Rwanda is also a major contribution to our efforts to combat impunity, but the operation of the Tribunals costs money. The timely payment of assessed contributions by all States is especially critical at this time, as the Tribunals embark on the final stages of their work, with a view to completing their mandates by the year 2010. Similarly, the Special Court for Sierra Leone has entered a critical phase in its mandate. Now is not the time to waver in our support. These tribunals match deeds to words in fostering the rule of law internationally. We must do the same by ensuring that our rhetorical support for those bodies is matched by our financial contributions. These courts are, after all, the rule of law in action.

(*spoke in French*)

We know that international tribunals can try only those most responsible for heinous crimes. The primary responsibility for prosecuting alleged offenders lies with States themselves. The implementation of the Rome Statute offers States the opportunity to enhance their domestic legal system and to ensure that criminal

trials are conducted in a manner consistent with standards agreed upon by the international community. Some States may require assistance in adapting their judicial systems to prosecute those responsible for war crimes, crimes against humanity and genocide. Canada has participated in preliminary discussions with a number of interested States about means of doing so, and will continue to work with others in order to provide that assistance.

(*spoke in English*)

This report helps us focus our minds on the efforts and challenges ahead. However, our work is not over. Terrible conflicts will continue to occur. Crimes such as genocide, crimes against humanity and war crimes will continue to be committed. Those acts will not immobilize us. Rather, they will galvanize us to ensure that the rule of law is not relegated to the status of an abstract concept, but instead serves as a guiding principle that animates our work.

The President: I now call on the representative of Mexico.

Mr. Gómez Robledo (Mexico) (*spoke in Spanish*): Mexico welcomes the report of the Secretary-General entitled "The rule of law and transitional justice in conflict and post-conflict societies" (S/2004/616). Our appreciation goes also to the British presidency of the Security Council for the timely manner in which he convened this second debate on that topic.

We agree with the report that a consensus is needed within the Organization on the definition of key concepts such as the rule of law or transitional justice. A proper orientation for the Organization's many efforts in essentially complex and unique processes depends on such a definition.

As the report suggests, we can understand that the rule of law implies a principle of governance according to which all persons, institutions and entities, public and private, are subject to laws, which must be compatible with international human rights norms and must guarantee accountability, including procedural transparency.

Today, the building or rebuilding of the structure of a civil society is in fact sustained by respect for international law. Also today, the law of inter-State relations — *ius gentium* — is at the service of the individual. The building of *civitas* is not limited to the establishment of peace; it must continue beyond the formal cessation of hostilities. In short, international law is an undeniable sign of civilization.

For its part, the notion of transitional justice — a relatively new concept in the international sphere — denotes above all a society's efforts to resolve the legal and institutional challenges arising from a change in regime, including, of course, the aspect of reparation for victims, leading ultimately to a reconciliation among the different national actors. Various societies face such situations as a result of internal conflicts, but also as a result of some profound change in their political organization. Such is the case in Iraq or the Sudan, where the clamour for justice represents a challenge for the societies in those countries, but also requires the assistance and support of the international community.

Mexico is not in a post-conflict situation. However, as a result of the change of administration, we are undergoing a transition towards a democracy that is daily growing in scope. In that connection, we believe that our experience — reflecting the conditions of an ongoing transition, but with the advantages inherent in a long period of stability and economic and social progress — can be shared with other societies.

The Mexican experience in building an institutional framework for electoral systems that inspire confidence in the electorate and confer legitimacy on the authorities to be elected has been and will remain available to the United Nations. We trust that we will soon see in my country the materialization of the United Nations electoral training centre project, which was announced during the Secretary-General's recent visit to Mexico.

Transitional justice has become a key element in the work of the Organization. In particular, it is increasingly present in the decisions of the Council. The action of the Security Council in addressing threats to international peace and security must entail the obligation to ensure a sufficient measure of stability and political and institutional reconstruction after a conflict. Without that component, the work of the Council is incomplete and weak, as we have seen in Haiti, for example. A few years later, the same episodes of violence and disruption of institutional life are repeated.

Justice, democracy and peace must be closely linked to ensure the stability and reconciliation of

societies. Undoubtedly, as recognized by the Secretary-General, the Organization already has a respectable number of experts in those areas, who can provide timely advice. Some countries in particular contribute or are in a position to provide valuable assistance on those matters at the bilateral level. However, post-conflict intervention efforts remain scattered in various areas within the Organization.

On that and other aspects of the report, I should like to make several observations.

First, my delegation believes that we must move forward towards a process of institutionalization and better coordination of United Nations interventions in post-conflict situations. In that connection, my delegation has received with interest the proposal of a number of countries aimed at creating a specialized unit within the Secretariat or a division within the Office of the High Commissioner for Human Rights.

Secondly, special tribunals of any kind are undoubtedly one of the Organization's boldest responses to the need to put an end to impunity and, at the same time, to punish those responsible for crimes that shock the social conscience. However, experience in this area, as indicated in the report, is ambivalent. Most assuredly, today we would not repeat many of the mistakes we made a decade ago, some of which Mexico noted at the time. On the one hand, special tribunals — as in the cases of the former Yugoslavia and Rwanda — represent an exorbitant cost, 15 per cent of the Organization's annual budget. In the case of the so-called hybrid or international tribunals — such as that for Sierra Leone, to which Mexico has contributed — voluntary contributions, as recognized in the report, have proved to be an uncertain source of financing. But, over and above those problems, Mexico reaffirms its conviction that, above all, it is up to the societies affected to initiate the establishment of such tribunals and, in any case, to rely on international advice, supervision and financing, depending on the circumstances. In some cases, regional or subregional organizations can and must supplement those tasks.

In that context, Mexico believes we must continue to promote the strengthening of the International Criminal Court. The Court must come to be seen, above all, as the mechanism which the international community has established to ensure that the most serious crimes of international importance do not go unpunished. As the Secretary-General indicated in his recent address to the General Assembly,

> "Those who seek to bestow legitimacy must themselves embody it; and those who invoke international law must themselves submit to it." (*A/59/PV.3, p. 3*)

In that connection, Mexico welcomes the firm commitment shown by the Secretary-General with regard to strengthening the foundations, within the Organization, of this renewed effort to promote the rule of law and transitional justice.

The President: I now call on the representative of Saint Vincent and the Grenadines.

Ms. Ferrari (Saint Vincent and the Grenadines): Saint Vincent and the Grenadines is pleased, Mr. President, that you have organized this open meeting, which gives countries like my own a rare opportunity to address the Council on an issue of vital importance to global accountability and governance.

We welcome the report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616). The report is balanced and thought-provoking; it highlights the crucial role of the United Nations in this troubling sector; and it is forthright in highlighting the Organization's successes as well as its failures.

There is no doubt that the ad hoc criminal tribunals established by the United Nations in post-conflict situations have helped in some measure to convey to the victims of criminal behaviour a sense that their persecutors will be made accountable for their crimes. The tribunals have gone a long way towards destroying the notion that perpetrators of serious crimes against humanity in any part of the world would enjoy impunity. The tribunals have also served up a rich diet of new jurisprudence which can only enhance and enrich the practice of international law.

It is troubling, however, that there is a public perception that the tribunals take a disproportionate amount of time to prosecute and bring finality and closure to criminal proceedings.

It is not for my delegation to speculate on the myriad causes of the apparently infinite agenda of the tribunals, but merely to say that the information given in the Secretary-General's report — that the two ad hoc

tribunals now have a combined annual budget exceeding $250 million, which is equivalent to more than 15 per cent of the United Nations total regular budget — must give us pause for thought. For even as we recognize the valuable contribution of the tribunals, we cannot help but ponder what $250 million could do for post-conflict development in the very same countries.

For the above and other reasons, we remain strong and determined supporters of the International Criminal Court. Our support has come with a heavy price attached, but we have never wavered in our commitment. As the Secretary-General notes,

> "domestic justice systems should be the first resort in pursuit of accountability. But where domestic authorities are unwilling or unable to prosecute violators at home, the role of the international community becomes crucial". (*S/2004/616, para. 40*)

We are pleased with the Secretary-General's endorsement of the Court and in particular his statement in the report that "the Court is already having an important impact by putting would-be violators on notice that impunity is not assured" (*ibid., para. 49*).

We recognize that the Court is not a panacea for all the ills of the world, nor will it be free of some of the same problems that have afflicted the ad hoc tribunals. But by our collective efforts we have managed to establish a permanent forum for prosecuting the most serious crimes of which mankind is capable.

According to the President of the Court, the Court is now ready to begin proceedings in its first cases, which could start at any time. This is indeed welcome news and we hope that the Court will translate words into actions in the very near future. Its credibility depends, in large measure, on whether it can prove its worth as a functioning institution. Let us hope that the lessons learned from the ad hoc tribunals will be heeded.

We conclude by echoing the call of the Secretary-General for all Member States of the United Nations that have not yet done so, to move towards the ratification of the Rome Statute at the earliest possible opportunity. We believe wholeheartedly, that if the Member States of the United Nations act as one in a multilateral capacity to tackle the heartbreaking aftermath of post-conflict situations with resolution and justice, mankind will be the ultimate beneficiary.

The President: The next speaker is the representative of Nigeria, to whom I give the floor.

Mr. Wali (Nigeria): I wish to congratulate you, Sir, on your assumption of the Presidency of the Security Council for the month of October and thank you for organizing the debate. I also take this opportunity to congratulate Spain on the able manner the affairs of the Council were conducted last month.

The topic for the debate today could not have been more timely and appropriate. The concept of justice and the rule of law is fundamental to human existence and the enjoyment of freedom, which we all cherish.

Nigeria believes that it was with this in mind that the third paragraph of the preamble to the Universal Declaration of Human Rights, adopted by the General Assembly on 10 December 1948, provides, among other things, that

> "whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law ...".

Article 7 provides, inter alia, that, "All are equal before the law and are entitled without any discrimination to equal protection of the law."

As a means of actualizing those fundamental rights, article 10 provides that,

> "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."

The Secretary General of the United Nations, Mr. Kofi Annan, in a report dated 13 April 1998 (S/1998/318), identified, among other reasons, "insufficient accountability of leaders, lack of transparency in regimes, inadequate checks and balances, non-adherence to the rule of law ... lack of respect for human rights," as causes of conflict in Africa. Nigeria notes with satisfaction that in responding to the complex conflict situations in Africa

the Security Council now decides on mandates that are multidisciplinary in nature.

Consequently, Nigeria welcomes the efforts of the United Nations in ensuring that peacekeeping missions are no longer limited to disarmament, demobilization and reintegration, but are expanded to include the strengthening of democratic governance, building the capacity of local institutions, reform of internal security systems as well as restoration of the rule of law and basic human rights.

Nigeria also welcomes that new approach because it allows the building of durable peace, which will facilitate sustainable development in countries emerging from conflict. The strategy is also more cost-effective because the causes of conflicts are addressed by encouraging, among other things, democratic pluralism, transparent and accountable governance, the rule of law and economic recovery. In that regard, it is gratifying to recall that such tenets of accountability, transparency and good governance have been adopted at the initiative of African leaders and Governments as an integral part of the New Partnership for Africa's Development (NEPAD).

It is therefore necessary for the United Nations and the international community to ensure that the implementation of the Millennium Development Goals go side by side with the entrenchment of justice and the rule of law, especially in countries emerging from conflicts.

Nigeria reaffirms its support for Security Council resolutions 808 (1993) and 955 (1994) establishing respectively, the International Tribunals in the former Yugoslavia and in Rwanda. Similarly, we reaffirm our support for the establishment of the Special Court for Sierra Leone. We believe that the work of the tribunals and the Special Court will bring justice to the victims of abuse of human rights and international humanitarian law.

We therefore appreciate and acknowledge the excellent but tedious work so far undertaken by the International Tribunals and the Special Court in their efforts to bring the perpetrators of heinous crimes against humanity to justice. In our view, the establishment of the tribunals is indicative of the collective rejection of impunity by the civilized world.

The establishment of the two International Tribunals and the Special Court is helpful, yet, regrettably, their ad hoc nature can hardly enhance their usefulness. Furthermore, the fact that the Special Court is funded through voluntary contributions has posed serious financial problems to the integrity of the Court. Nigeria, therefore, appreciates the agreement by the United Nations to come to the financial aid of the Court, and to bail it out of its financial predicament. We, therefore, call for the funding of the Court from the regular budget of the United Nations if the integrity and dignity of the Court are to be preserved.

Nigeria is of the view, and indeed is convinced, that the fight against impunity should be taken to its logical conclusion. It is therefore necessary to have a more permanent international judicial institution which would replace the two tribunals and the Special Court. Consequently, Nigeria believes that the establishment of the International Criminal Court at The Hague was envisioned to fulfil that purpose. It will be recalled that the Rome Statute which established the ICC came into force in July 2002. It is encouraging that 97 countries are so far parties to the Statute.

Nigeria wishes to urge those States that have not yet done so to become parties to the Statute in order to make the Court more universal, thereby giving greater acceptability and universality to the global fight against impunity. As noted by the Secretary-General, the Court is "already having an important impact by putting would-be violators on notice that impunity is not assured" (*S/2004/616, para. 49*). Nigeria therefore supports the statement by the Secretary-General in his report that domestic justice systems should be the first resort in pursuit of accountability.

Accordingly, Nigeria urges States parties to the Rome Statute to incorporate into their national laws the provisions of the Statute which are against impunity and crimes against international humanitarian law. Nigeria reaffirms its support for the Rome Statute, and acknowledges with approval the commendable role that non-governmental organizations are playing to ensure the effectiveness and independence of the International Criminal Court. The fact that there have already been some referrals from Member States to the ICC so soon after its establishment is evidence of the working of the complementary roles expected to be played by the Court and Member States in the fight against impunity and breaches of international humanitarian law.

Given the need to ensure justice and the rule of law, particularly in developing countries and countries

emerging from conflict, there is a need for the United Nations to increase its assistance to such countries. In this regard, we call on the United Nations to provide training for lawyers, prisons officials and prosecutors, as well as to organize seminars and workshops for lawyers, judges and others in those countries. There is also a need to assist such countries by providing additional funds for the education of the populace, especially at secondary- and high-school levels. It is Nigeria's view that an enlightened populace will readily protect and guard its rights and obligations.

The concept of justice, the rule of law and equity that obtains at the national level needs to be replicated at the global level. In this regard, it will be necessary for the United Nations and the international community to foster an international system that truly and genuinely upholds the principle of the equality of States, as envisioned by customary international law and the Charter. Accordingly, there is a need to ensure rule-based, open and transparent participation by all sovereign States in global collective decision-making. Nigeria therefore calls for the best to be made of the potentials and benefits of globalization as a potent force for all humanity. In our view, the present asymmetries in the architecture of the financial and international trading system accentuate divisions, marginalization, inequalities and unfairness. As a result, developing countries are at a disadvantage, as they lack the power and the voice to negotiate and make decisions on an equal footing with their development partners.

The President: The next speaker is the representative of Indonesia, to whom I give the floor.

Mr. Jenie (Indonesia): It is a pleasure for me to be here in the Security Council today to make a contribution to the Council's consideration of the agenda item, "Justice and the rule of law: the United Nations role". Before I go any further, however, I would like to congratulate you, Sir, on your assumption of the presidency of the Security Council for this month of October, and to pledge the full support of the delegation of Indonesia.

My delegation takes note of the report of the Secretary-General on this subject (S/2004/616). None of us could disagree that justice and the rule of law are vital elements for the functioning of States. They are important for creating stability, peace and democracy, and their establishment is an essential element, not only in peacekeeping operations or transitional societies, but in all societies. Justice and the rule of law are important to every human being.

Indonesia believes that, in providing support for the rebuilding of justice and the rule of law in a transitional society, we in the international community must begin with the recognition of differences in the national context. If a peacekeeping mission is to succeed, its actions, based on justice and rule of law, must relate to, and be grounded in, the national situation. As the Secretary-General has aptly put it, the role of the United Nations and the international community should be solidarity, not substitution. As he also said in his report, we must be careful to avoid importing foreign models that may not be of any help to the local situation.

The international community and the United Nations need to redouble their efforts to assist Member States in fulfilling the objectives of justice and the rule of law. That should be done in cooperation with Member States, with the United Nations identifying those areas in which it can render support. For example, the United Nations can play a more active role in enhancing a general awareness and understanding of internationally agreed principles that are essential to the realization of justice and the rule of law. Such an initiative can be realized by, inter alia, making information widely available to legal practitioners responsible for justice and the rule of law.

The United Nations can further assist by providing training in Member States to legal personnel who are fulfilling their responsibilities in the area of justice and the rule of law. Whatever initiatives are taken by the United Nations, it is important to bear in mind that the objective is to strengthen, not undermine, the national legal process.

In this connection, my delegation believes that any proposals for strengthening United Nations support for transitional justice and the rule of law in any society must be made with a view to promoting and abiding by the principles enshrined in the United Nations Charter and international law.

Some legal scholars have drawn attention to the variety of legal mechanisms available today for addressing this subject. Another important process, as recognized in the report, is the use of truth and reconciliation commissions, an instrument that has been helpful to the recovery process in some post-

conflict societies. Although it is not a substitute for the judicial process, we should not underestimate its contributions.

While the Secretary-General is eloquent in his analysis and recommendations, he indicates in his report that he will be instructing the Executive Committee on Peace and Security with regard to a proposal for further action on the issues he has identified. In our view, the issues involved here might require a higher level of executive attention than that Committee can provide. Caution must be exercised, however, so that any such new structure is in line with the reform process of the Organization and does not impose an unnecessary burden on its programme budget.

The President: There are no other speakers inscribed on my list. We have come to the end of a debate that has seen 45 contributions: that in itself demonstrates the importance of this subject. We have had a very rich debate. It has given us lots of food for thought. The Secretary-General's report has been roundly welcomed in those contributions. The challenge now, very clearly, is to convert what some feared might be an abstract concept and change it into something which is implemented before conflict, after conflict and at all stages. But it applies to all countries and indeed, should be done in solidarity with countries and not imposed as one arrangement for everybody.

After consultations among members of the Security Council, I have been authorized to make the following statement on behalf of the Council:

> "The Security Council thanks the Secretary-General for his report dated 3 August 2004, which was reissued on 23 August 2004 (S/2004/616), and reaffirms the vital importance that the Council attaches to promoting justice and the rule of law, and post-conflict national reconciliation. The Council will consider, as appropriate in its deliberations, the recommendations set out in paragraph 64 of the report.
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> "The Security Council urges the Secretariat of the United Nations to take make proposals for implementation of the recommendations set out in paragraph 65 of the report, and draws attention in particular to the importance of the practical measures set out in that paragraph that can be implemented rapidly, including coordination of existing expertise and resources, setting up databases and web-based resources and developing rosters of experts, workshops and training. The Council urges Member States which are interested in doing so to contribute national expertise and materials to these developments within their means, and to improve their capacities in these areas.
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> "The Security Council recalls the important statement made by the Secretary-General to the General Assembly, at its fifty-ninth session, on 21 September 2004 and endorses his view that, 'It is by reintroducing the rule of law, and confidence in its impartial application, that we can hope to resuscitate societies shattered by conflict.' The Council stresses the importance and urgency of the restoration of justice and the rule of law in post-conflict societies, not only to come to terms with past abuses, but also to promote national reconciliation and to help prevent a return to conflict in the future. The Council emphasizes that such processes must be inclusive, gender-sensitive and open to the full participation of women.
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> "The Security Council underlines the importance of assessing the particular justice and rule of law needs in each host country, taking into consideration the nature of the country's legal system, traditions and institutions, and of avoiding a 'one size fits all' approach. The Council recognizes that building national capacities and independent national institutions is essential, that local ownership and leadership in that process should be encouraged and respected, and that international structures can play a complementary and supportive role.
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> "The Security Council emphasizes that ending the climate of impunity is essential in a conflict and post-conflict society's efforts to come to terms with past abuses, and in preventing future abuses. The Council draws attention to the full range of transitional justice mechanisms that should be considered, including national, international and 'mixed' criminal tribunals and truth and reconciliation commissions, and underlines that those mechanisms should concentrate not only on individual responsibility for serious crimes, but also on the need to seek peace, truth and national reconciliation. The

Council welcomes the report's balanced appraisal of the lessons to be learned from the experience of the ad hoc international criminal tribunals and 'mixed' tribunals.

"The Security Council recalls that justice and rule of law at the international level are of key importance for promoting and maintaining peace, stability and development in the world. The Council underlines also the importance of helping to prevent future conflicts through addressing their root causes in a legitimate and fair manner.

"The Security Council warmly welcomes the Secretary-General's decision to make the work of the United Nations to strengthen the rule of law and transitional justice in conflict and post-conflict societies a priority for the remainder of his tenure. The Council invites the Secretary-General to keep it informed on the Secretariat's progress in taking forward the recommendations set out in paragraph 65 of the report and expresses the intention to consider this matter again within six months."

This statement will be issued as a document of the Security Council under the symbol S/PRST/2004/34.

The Security Council has thus concluded the present stage of its consideration of the item on its agenda. I thank again all the participants for their contributions and for the quality of the discussion of this very important and topical subject.

The meeting rose at 6.45 p.m.